

Officers Report

Planning Application No: 136125

PROPOSAL: Planning application for residential development for 9no. dwellings, surface parking and associated landscaping.

LOCATION: Land off Burton Lane End Burton Waters Lincoln LN1 2UA

WARD: Saxilby

WARD MEMBERS: Cllr Brockway and Cllr Cotton

APPLICANT NAME: Beal Developments Ltd

TARGET DECISION DATE: 19/06/2017

DEVELOPMENT TYPE: Minor - Dwellings

CASE OFFICER: Martin Evans

RECOMMENDED DECISION: Grant planning permission subject to conditions

Description:

Planning permission is sought for the erection of 9 dwellings with associated car parking and landscaping. The site is within the Burton Waters development and at the time of the site visit was being used as a temporary storage/works area in connection with the development of the land to the east. To the west is a public house car park, to the north a care home, to the east residential development and to the south an office building and pumping station. The site is in flood zone 2.

The proposed dwellings front Burton Lane End and come in two blocks of three and six with a vehicle parking court to the rear. The design features subservient dwellings to each end of the terrace, eaves gables, entrance canopies, partial cladding to the first floor and brick arches above some openings. The drawings specify precise external finishing materials. The drawings show each dwelling has two bedrooms as opposed to the mix stated on the application form. Each modest rear garden would have direct access to the gated parking court. Eighteen parking spaces would serve nine dwellings (2 per unit).

This application is presented to the committee as it is considered the recommendation is finely balanced.

Relevant history:

On site- 121818- planning application for proposed offices and associated car parking- approved 23/1/9.

Land to east- 131665- planning application for erection of 13no. dwellinghouses with associated access, car parking and landscaping- approved 22/7/15.

Land to the west- 135568- Planning application to erect Lodge style Hotel (C1) and associated works, including landscaping and car park configuration- approved 17/3/17.

Representations:

Ward Councillor (summary):

- Ambiguity over what constitutes Burton Lane End.
- Set number of properties and facilities to be built at Burton Waters following public inquiry. Proposal is contrary to this and also to policy formulated on the report specifically for Burton Waters.
- No additional dwellings proposed in CLLP for Burton Waters. Not sure this would come under windfall policy either. 9 dwellings may be to avoid CIL.
- Contrary to NPPF as site is not served by many facilities. It is on a bus route but after 8pm there are no buses until 6am. The shop at Burton Waters has small shop for bread and milk etc, it is not a mini-supermarket meaning it is necessary to leave the area most likely by car. There is no doctors, post office, or school on site- all are accessed in Lincoln or Saxilby. Saxilby school is now at capacity and the doctors is stretched/at capacity.
- Keeps open mind with reservations.

Burton Parish Council objects (summary);

- Original plans for dwellings at Burton Waters made to Inspector and an overall number was given. It should be considered whether these would be in excess of the recognised number.
- CLLP Policy LP1 encourages sustainable development.
- LP2- Burton Waters is a medium village with zero growth allocated due to the fact it has already exceeded its required growth.
- There is no neighbourhood plan or local support to justify the proposal.
- 9 dwellings may be an appropriate number but this is not an appropriate location as defined as the proposal is outside the core residential allocated area and is on a site which has permission for commercial development.
- LP4- Burton Waters has fulfilled its growth target. WLDC is meeting its 5 year supply and this site is not required.
- Proposal contrary to LP4 but there is no need to apply these further policy tests as the allocation is complete.
- LP1- Burton Waters has few facilities and access to public transport, schools, doctors surgeries and shopping poses problems. This is well known locally and is subject of much debate. This is not a sustainable location for development.
- Developer may already be on site and starting works.

Local residents: no reply.

LCC Highways: does not wish to restrict the grant of permission.

Environment Agency: Proposal meets NPPF requirements subject to conditions securing mitigation measures within the submitted FRA, namely, finished floor levels no lower than 6.10m AOD and flood resilient and resistant constructions techniques to be used. These should be implemented prior to occupation.

LCC Archaeology: no input required.

North Kesteven District Council considers the proposal would have no material impact on its area.

Canal and River Trust: no comment.

Upper Witham IDB: site within its district and objects in principle to any development in flood plain (zones 2 and 3). It is noted the FRA contains appropriate mitigation. Paragraph 3.7.5.1 of FRA is misleading- Burton Waters was originally a farm and the site is a grassed area. It cannot be classed as impermeable. Allowed discharge rate should be reduced from the actual discharge rate. Preferred discharge would be to the marina. If discharge is to Anglian Water surface water sewer it should accord with the original design and it should be checked if there is an allowance for this specific site. SUDS/attenuation features should be included.

Relevant Planning Policies:

National guidance

National Planning Policy Framework (NPPF)

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

National Planning Practise Guidance (NPPG)

<https://www.gov.uk/government/collections/planning-practice-guidance>

Local Plan

Central Lincolnshire Local Plan adopted 24th April 2017

<https://www.n-kesteven.gov.uk/central-lincolnshire/local-plan/>

Policy LP1: A Presumption in Favour of Sustainable Development

Policy LP2: The Spatial Strategy and Settlement Hierarchy

Policy LP4: Growth in Villages

Policy LP10: Meeting Accommodation Needs

Policy LP11: Affordable Housing

Policy LP12: Infrastructure to Support Growth

Policy LP13: Accessibility and Transport

Policy LP14: Managing Water Resources and Flood Risk

Policy LP17: Landscape, Townscape and Views

Policy LP25: The Historic Environment

136125 Burton Lane End Burton Waters

Policy LP26: Design and Amenity

Neighbourhood Plan

There is no neighbourhood plan.

Main issues

- *Principle/ flood risk*
- *Design*
- *Residential amenity*
- *Highways*
- *Archaeology*
- *Accommodation needs/contributions/affordable housing*
- *Foul and surface water drainage*

Assessment:

Principle/flood risk

The Central Lincolnshire Local Plan (policy LP2) designates Burton Waters as a medium village within the settlement hierarchy. Such designation has been determined in part by the facilities available within that settlement and connections to other higher level villages and towns.

The settlement is considered within LP2 to be a sustainable location for limited residential development contrary to the some representations received. The reason is that the site benefits from good road, bus, cycle, pedestrian and waterway links into the centre of Lincoln with its associated services and facilities. There are some services and facilities within Burton Waters such as a public house, restaurant and leisure centre. It is acknowledge that the area lacks some services such as doctors, schools and a supermarket but these do not make the site unsustainable for limited future development given their availability in Saxilby and Lincoln.

Policy LP2 designates Burton Waters a tier 5 medium village where unless otherwise promoted via a neighbourhood plan or through the demonstration of clear local community support (as defined), the following applies:

- they will accommodate a limited amount of development in order to support their function and/or sustainability.
- no sites are allocated in the CLLP for development
- typically, and only in appropriate locations (as defined), development proposals will be on sites of up to 9 dwellings or 0.25 hectares for employment uses. However, in exceptional circumstances (as defined) proposals may come forward at a larger scale on sites of up to 25 dwellings or 0.5 hectares per site for employment uses where proposals can be justified by local circumstances.

The site is not allocated through a neighbourhood plan nor is there local community support, however, the provision of 9 additional dwellings is considered to contribute towards the wider sustainability of Burton Waters as future residents would use the commercial elements within the development and therefore enhance their viability. The settlement has a unique character within the district as it is built around a marina and is relatively physically self contained but noting residents use services and facilities outside Burton Waters where not provided on site as highlighted by Cllr Cotton.

The site is not allocated for development in the CLLP. The proposal meets the anticipated scale of development threshold of 9 dwellings. With regards to the definition of appropriate location, the proposal would retain the core shape and form of the settlement as it is located between residential development to the south east, care home to the north east, car park/public house/future hotel site to the north west and office development to the south west so could be described as an infill plot which benefits from extant permission to develop offices; the proposal would not significantly harm the settlements character and appearance nor that of the surrounding countryside or rural setting of the settlement. Furthermore, in order to qualify as an appropriate location the location must also not conflict, when taken as a whole, with national and local policy which is discussed further below.

Policy LP4 permits 15% growth in Burton Waters but acknowledges via asterisk that the growth level indicated is subject to a known significant strategic constraint being overcome, in this case flood risk. Paragraph 3.4.5/6 of the CLLP details the strategic constraint as;

“3.4.5 In the opposite direction, some settlements in levels 5-6 of the settlement hierarchy have known, significant, strategic constraints. In these settlements, whilst the 10-15% growth level has not been altered to take account of these constraints, it is questionable whether development proposals will be able to overcome these constraints. The constraints are:

- *Flood risk – where a settlement is entirely at risk of flooding so that any likely development site would be in an area of flood risk”*

“3.4.6 If these constraints can be overcome, proposals will be supported up to the growth level proposed for each settlement. However, for the purpose of meeting the growth targets in LP3, this Local Plan assumes a zero per cent increase to take account of the uncertainty that much, if any, growth can take place in these locations.”

Taking growth levels first, LP4 does not limit growth absolutely. Where a proposed development would exceed the identified growth level, in conjunction with other developments built since April 2012, other extant committed (permitted) growth and any sites allocated in the Local Plan, it will be expected to be accompanied by clear evidence of appropriate levels of community support or supported by either allocations or policies in an adopted Neighbourhood Plan.

The draft CLLP appendix B provides growth figures accurate on 31/3/15 and clarifies any new permissions since this date can be used against the remaining growth target. The table states remaining growth in Burton Waters is 0. Since 31/3/15 planning application 131665 detailed above granted permission on 22/7/15 for 13 dwellings on the adjacent site. It is possible to draw a distinction between the proposal and 131665 because this permission was issued whilst the CLLP was at an early stage of preparation so carried little weight and the site allocations for Burton Waters in the West Lindsey Local Plan still applied. Under the CLLP Burton Waters is simply a medium village with no remaining growth and a strategic constraint.

It is therefore clear that there is no remaining growth within Burton Waters to accommodate the proposal and the exceptions to this rule via clear local community support or allocation through a neighbourhood plan have not been satisfied. The proposal has attracted local objection from Burton Parish Council and reservations from one of the Ward Councillors. It appears, therefore, that the proposal is contrary to this part of the policy and should be resisted unless other material reasons indicate otherwise.

One material reason for accepting this additional growth is the unique circumstances surrounding Burton Waters. Historically, the approach to Burton Waters has been to permit large scale residential development and, it could be argued that this site forms the 'final piece of the jigsaw'. It is accepted that the site has permission for B1 offices which would assist the creation of a balanced community at Burton Waters. The commercial reality of the attractiveness of this site has, however, to be taken into account. The applicant has shown that despite continued long term marketing no significant interest has been received. It is considered therefore the viability of the site as a commercial area is very limited and would lead to this site remaining incongruently vacant. The site, however, is surrounded by other similar development to that proposed and this would complete the development of Burton Waters in a manner not dissimilar to previous allocations. This is considered to be an important consideration in this instance to allowing a small number of additional dwellings in this particular instance.

As noted Policy LP4 also notes that Burton Waters has a strategic constraint namely flooding. The site specific flood risk assessment is considered acceptable by the Environment Agency subject to conditions controlling the finished floor level (FFL) and flood resilience measures. The site must also pass the sequential test as detailed in the NPPF and LP14. The starting point is the development plan policy but this refers directly to the NPPF which requires;

"100. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.

101. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed

development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.

102. If, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate.”

The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, there is a requirement to consider the vulnerability of the proposed use. Dwellings are classed as more vulnerable in table 2 of the flood risk section of the PPG (noting 121818 permitted B1 office use which is less vulnerable).

The NPPG advises;

“For individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases it may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives.

When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. For example, in considering planning applications for extensions to existing business premises it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere. For nationally or regionally important infrastructure the area of search to which the Sequential Test could be applied will be wider than the local planning authority boundary.”

The Council has traditionally taken a strict approach to the sequential test in relation to residential development in areas at high risk of flooding. There are several factors relevant to consideration of the sequential test in this instance. Firstly, the site is not in flood zone 3 (high risk) but flood zone 2 (medium risk). Secondly, the Council's historic approach to Burton Waters has been to permit residential and other development in areas at risk of flooding provided site specific flood risk mitigation is implemented, as per the permissions for the adjacent care home, 13 dwellings and hotel. Thirdly, it could be argued that this site forms the 'final piece of the jigsaw' as it is surrounded by other similar development and would complete the development of Burton Waters as was

anticipated by previous allocations. Fourthly, and finally, the applicant was granted planning permission for a B1 office development (which was implemented and remains extant) but does not appear to be a viable option given the lack of interest as set out in the submitted supporting letter from the applicants chartered surveyors Garness Jones which states;

“We have had various discussions with you with regards to speculative build, however given the lack of demand and the potential holding costs to yourself it would be my recommendation that you avoid developing these units.”

It is considered that the proposal, by virtue of its unique characteristics and those of the surrounding area described above, can be considered to pass the sequential test because it would help to sustain the existing community and sites outside Burton Waters are unlikely to provide reasonable alternatives. It is considered that the favourable outcome of this sequential test will not diminish to ability of the Council to resist future residential development in areas at risk of flooding because of the unique set of circumstances set out in this case. It should be noted that table 3 within the flood risk section of the NPPG indicates more vulnerable uses (including residential) are appropriate in flood zone 2 and that the exceptions test is not required.

In conclusion it is considered that the principle of this case is finely balanced. On balance and when taken as a whole it is considered that despite exceeding anticipated growth levels for Burton Waters, the unique characteristics of the site and its surroundings means it is recommended to Members that the principle of development should be supported; the sequential flood risk test is passed; and the site specific flood risk assessment provides appropriate mitigation. Conversely, it is open to Members to determine that the exceedance of growth outlined in LP2/4 is unacceptable and to refuse planning permission on this basis.

Design

The design in the area tends to be modern in appearance, relatively simple and well executed. The area is characterised by terraces of dwellings with a simple palette of materials, modest private amenity areas and communal surface parking areas with peripheral landscaping. The proposed design entails smaller scale dwellings than some of those found in the surrounding area but the overall proportions of the proposal and the architectural detailing described above is in keeping with the character of the area and is acceptable in its own right in accordance with LP26.

Residential amenity

The proposal would front onto two car parks resulting in no harmful overlooking to residential dwellings. The proposed dwelling furthest south would not be harmfully overlooked by the existing office development by virtue of the separation distance of 10m and limited first floor windows of the office development. The proposal is sufficiently removed, with approximately 30m between buildings, from the potential future development of a hotel to the west

to prevent harm to residential amenity. The proposal would have an acceptable impact on residential amenity in accordance with LP26.

Highways

LCC Highways raises no concerns regarding highway impacts. It is considered that the size (5m long x 2.5m wide), number (18- 2 per dwelling), layout and access to the parking area is acceptable. The level of traffic generated by the proposal would be minimal and not give rise to highway issues. The impact on highway safety and convenience is acceptable in accordance with LP13.

Archaeology

LCC Archaeology confirms there is no need for archaeological works in accordance with LP25.

Accommodation needs/contributions/affordable housing

LP10 requires a mix of housing types to be provided whereas the offer is uniformly 2 bedroom. However, the SHMA notes a requirement for all types of dwelling meaning permission should not be refused for this reason. There is a requirement for higher access standards for 30% of the dwellings to Part M Building Regulations as set out in LP10 and as recommended via condition.

No external body has sought developer contributions nor are any required under policy LP12.

Policy LP11 states;

“if a development scheme comes forward which is below these thresholds (11 dwellings or more) and thus does not require the provision of affordable housing, but the scheme is followed by an obviously linked subsequent development scheme at any point where the original permission remains extant, or up to 5 years following completion of the first scheme, then, if the combined total of dwellings (or floorspace) provided by the first scheme and the subsequent scheme/s provide 11 or more dwellings (or 1,000 sqm or more floorspace), then Policy LP11 as a whole will be applied, with the precise level of affordable housing to be provided being ‘back dated’ to include the earlier scheme(s).”

As an affordable housing commuted sum was paid under 131665, affordable housing cannot be sought for the current application for 9 dwellings. The key element of wording in the text of the policy is “, then,” as this means if the preceding text applies (which it does not in this instance because the application for 9 dwellings has not been “*followed by*” an obviously linked subsequent development) then the preceding text applies. Hence there is no policy requirement for affordable housing in this case.

Foul and surface water drainage

It is proposed to connect foul and surface waters to the mains sewer. It is noted that this arrangement was unconditionally accepted for the previous office approval on the site and was approved via condition for the adjacent 13 dwellings. The site itself benefits from infrastructure provision because it was always intended to be developed. Given the well-known high water table in the area traditional soakaways are not an option therefore disposal to mains sewer is an appropriate alternative that accords with Policy LP14.

Conclusion

The proposal has been considered in light of relevant development plan policies, namely, Policy LP1: A Presumption in Favour of Sustainable Development, Policy LP2: The Spatial Strategy and Settlement Hierarchy, Policy LP4: Growth in Villages, Policy LP10: Meeting Accommodation Needs, Policy LP11: Affordable Housing, Policy LP12: Infrastructure to Support Growth, Policy LP13: Accessibility and Transport, Policy LP14: Managing Water Resources and Flood Risk, Policy LP17: Landscape, Townscape and Views, Policy LP25: The Historic Environment and Policy LP26: Design and Amenity of the Central Lincolnshire Local Plan adopted 24th April 2017 as well as the content of the National Planning Policy Framework (NPPF) and National Planning Practise Guidance (NPPG). It is considered that despite conflicting with the growth levels set out in LP2 and LP4, material considerations including the unviable extant permission on the site, the character of the site and its surroundings, and the ability to mitigate flood risk mean it is considered planning permission should be approved.

Human Rights Implications:

The above objections, considerations and resulting recommendation have had regard to Article 8 and Article 1 of the First Protocol of the European Convention for Human Rights Act 1998. The recommendation will not interfere with the applicant's and/or objector's right to respect for his private and family life, his home and his correspondence.

Legal Implications:

Although all planning decisions have the ability to be legally challenged it is considered there are no specific legal implications arising from this report

Conditions stating the time by which the development must be commenced:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91 (1) of the Town and Country Planning Act 1990 (as amended).

Conditions which apply or require matters to be agreed before the development commenced:

2. No development shall take place until details have been submitted to demonstrate that at least 30% of the total number of dwellings meet the required standards set out in Part M4(2) of the Building Regulations 2010 and have been agreed in writing with the Local Planning Authority. The approved details shall be implemented in full prior to the occupation of the dwelling concerned.

Reason: To ensure the development meets the requirements for accessibility set out in Part M4(2) of the of the Building Regulations 2010 and in accordance with Policy LP10 of the Central Lincolnshire Local Plan adopted 24th April 2017.

3. No development shall take place until, a scheme of landscaping including details of the size, species and position or density of all trees and hedges to be planted and fencing and walling have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure appropriate landscaping of the site in accordance with Policy LP26 of the Central Lincolnshire Local Plan adopted 24th April 2017.

4. No development shall take place until flood resilient and resistant construction techniques to be used in the dwellings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The agreed details shall be implemented in full prior to occupation of the dwelling concerned.

Reason: To ensure appropriate floor risk mitigation is in place in accordance with Policy LP14 of the Central Lincolnshire Local Plan adopted 24th April 2017.

5. No development shall take place until details of the proposed foul and surface water drainage arrangement have been submitted to and approved in writing by the Local Planning Authority. The details agreed shall be implemented in full prior the first occupation of the development.

Reason: To secure appropriate foul and surface water drainage, in accordance with the measures previously agreed for the development of this site and in accordance with Policy LP14 of the Central Lincolnshire Local Plan adopted 24th April 2017.

Conditions which apply or are to be observed during the course of the development:

6. The development, including external finishing materials, shall proceed in accordance with the following approved drawings; J1645 01, 02 Rev A, 03, 04, 05 and 06.

Reason: For the sake of clarity and in the interests of proper planning.

7. Unless otherwise specified in the conditions attached to this planning permission the development shall be carried out in accordance with the approved Flood Risk Assessment (BSP consulting, dated 07/04/2016) including the finished floor levels for all of the dwellings hereby approved shall be set no lower than 6.10m AOD.

Reason: To minimise flood risk and to accord with Policy LP14 of the Central Lincolnshire Local Plan adopted 24th April 2017.

8. The vehicle parking spaces hereby permitted shall be completed prior to the first occupation of the development and shall thereafter be retained in perpetuity for the use of occupiers of and visitors to the dwellings hereby permitted.

Reason: To ensure sufficient vehicle parking space in accordance with Policy LP13 of the Central Lincolnshire Local Plan adopted 24th April 2017.

Conditions which apply or relate to matters which are to be observed following completion of the development:

None.