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## Appeal Decision

Site visit made on 3 July 2018

**by Elaine Worthington BA (Hons) MTP MUED MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20<sup>th</sup> July 2018**

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**Appeal Ref: APP/N2535/W/17/3189431**

**35 Gainsborough Road, Lea, Gainsborough, DN21 5HR**

- 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 Jacklin-Idczak against the decision of West Lindsey District Council.
  - The application Ref 135881, dated 19 January 2017, was refused by notice dated 18 May 2017.
  - The development proposed is a new dwelling to the rear of existing dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The reasons for refusal in this case refer to amongst other things, whether the proposal would provide adequate living conditions for future occupiers with particular reference to daylight and outlook, and its effect on highway safety in relation to access for delivery and emergency vehicles.
3. The appellant has submitted amended plans to overcome these reasons for refusal which alter the position of the house within the site along with its orientation in relation to neighbouring properties and its design (including its fenestration details). The changes to the proposal also alter which trees would be affected within the site.
4. Paragraph M.1.1 of Annex M of the Planning Inspectorate's Procedural Guidance advises that in such instances a fresh planning application should normally be made. Paragraph M.2.1 is clear that if an appeal is made the appeal process should not be used to evolve a scheme and it is important that what was considered is essentially what was considered by the local planning authority, and on which interested people's views were sought.
5. Whilst I note the appellant's contrary views on this matter, in line with this advice and to ensure the suggested changes to the development do not prejudice interested parties (and with the 'Wheatcroft' principles in mind) , I confirm that the appeal has been decided on the basis of the proposal as set out in the submitted planning application.

## **Main Issues**

6. The main issues in this case are:

- Whether the proposal would provide a suitable site for development having regard to national and local policies which seek to achieve sustainable patterns of development and protect the countryside; and
- The effect of the proposal on biodiversity and protected species; and
- Whether the proposal would provide adequate living conditions for future occupiers with particular reference to daylight and outlook; and
- The effect of the proposal on highway safety, with particular reference to access for delivery and emergency vehicles.

## **Reasons**

### *Sustainable patterns of development and the protection of the countryside*

7. The appeal site forms part of the long rear garden of the dwelling at 35 Gainsborough Road and comprises an orchard. Policy LP2 of the Central Lincolnshire Local Plan (Local Plan) sets out the spatial strategy and settlement hierarchy. It identifies Lea as a medium village in tier 5 of the hierarchy where unless otherwise promoted via a Neighbourhood Plan or through the demonstration of clear local community support, typically and only in appropriate locations, proposals will be acceptable on sites of up to 9 dwellings.
8. Local Plan Policy LP4 concerns growth in villages and permits 15% growth (or 67 dwellings in Lea). Paragraph 3.4.9 of the supporting text confirms that an allocation included in the Local Plan for Lea counts towards the 15% growth level anticipated there. Local Plan Policy LP4 also sets out a sequential test which prioritises brownfield or infill sites. As a greenfield site on the fringes of Lea, the Council regards the site to be a greenfield site at the edge of a settlement falling within tier 3 of the sequential test. This is the lowest tier of priority and development will only be allowed there in appropriate locations, and in light of a clear explanation of why sites are not available or suitable for categories higher up the list.
9. Appropriate locations (in terms of Policies LP2 and LP4) are defined as a location which does not conflict, when taken as a whole, with national policies or policies within the Local Plan. In addition, to qualify as an appropriate location, the site, if developed, would; retain the core shape and form of the settlement; not significantly harm the settlement's character and appearance; and not significantly harm the character and appearance of the surrounding countryside or the rural setting of the settlement.
10. The appeal site is part of No 35's extensive garden area and adjoins the host property to the east, the dwellings in Green Lane to the north and is in part abutted by dwellings to the south. However it is also immediately adjacent to open countryside to the west and south. Despite being enclosed as part of a considerable residential garden, as a traditional orchard it relates closely to that adjoining rural landscape at the edge of the settlement and as such, contributes to the rural setting of Lea.

11. The proposed dwelling and the long access to it along the southern boundary of the site would require the removal of a significant number of trees. The appellant has submitted an Arboricultural Report with the appeal which confirms that the majority of the trees that would be felled are fruit trees which fall within Category C and are of low amenity value. The Council accepts that the trees on the site are not worthy of individual or group Tree Preservation Orders. I also acknowledge the appellant's argument that the trees are not protected or in a Conservation Area and could be felled at any time.
12. Nevertheless, although the trees to the periphery of the site and in its central area would be retained, the proposal would lead the loss of a good deal of the orchard and result in the urbanisation of the site. The site is within an Area of Great Landscape Value (AGLV). Whilst I note that this covers the whole village and has not necessarily precluded development elsewhere, Local Plan Policy LP17 still requires proposals to have regard to maintaining and responding positively to any natural feature within the landscape which positively contributes to the character of the area such as trees and woodland.
13. The proposal would undermine the open nature of the site on the edge of the village and lead to the loss of an appreciable amount of the traditional orchard which contributes to the character of the area. The retained trees would help to screen the development within the site to some extent. The proposed dwelling would be single storey with significant elements of glazing which the appellant argues would reflect back images of the retained trees. Views from the wider landscape are mainly taken looking back towards the village from the public footpath along the riverbank and from Gainsborough Road to the south west of the village. I accept that these are longer range views and that the proposal would be seen to some extent against the backdrop of the village from there. I also appreciate that additional replacement planting and the management of the remaining orchard trees is intended and could be secured via a planning condition.
14. Even so, the proposal would encroach into the orchard site and in removing a substantial number of trees, and introducing a dwelling, would detract from its open character and the rural character and appearance of the surrounding area. It would be appreciated as an unsympathetic addition that would have an adverse impact on the intrinsic character and beauty of the surrounding countryside which is recognised as an AGLV. Given its location right on the fringes of Lea, it would also serve to undermine the pleasant rural setting of the village to which the appeal site currently contributes.
15. As such, overall I consider that the proposal would significantly harm the character and appearance of the surrounding countryside and the rural setting of the settlement. Consequently, it would not qualify as an appropriate location for development in Lea as required by Local Plan Policy LP2.
16. The appellant argues that as things stand the identified growth level for Lea set out in Local Plan Policy LP4 has not been achieved and the allocated site relied on does not have planning permission. However, I am mindful that the Local Plan has only recently been adopted, and in the absence of any substantiated evidence, I see no reason to think that this allocation will not come forward over the plan period. Whilst Local Plan Policy LP4 does not prevent windfall development, paragraph 3.4.11 clarifies that where a proposed development would exceed the identified growth level, it will be expected to be accompanied

- by clear evidence of appropriate levels of community support or be supported by either allocations or policies in an adopted Neighbourhood Plan.
17. Community support is also required by Local Plan Policies LP2 and LP4 and the Council suggests that this could be generated via a pre-application community consultation exercise or support from a Parish or Town Council. Whilst I note the appellant's view that this requirement is unduly onerous and simplistic, I am conscious that the Local Plan was only recently adopted and tested against the aims of the Framework in terms of boosting housing supply. There are objections to the appeal proposal from a number of local residents and from the Lea Parish Council. On this basis, the proposal fails to demonstrate evidence of clear local community support.
  18. The Lea Neighbourhood Development Plan (Neighbourhood Plan) has been recently adopted. Although I accept that as a plot for single dwelling the appeal site is not of a size likely to be allocated, it remains that in terms of the requirements of Local Plan Policy LP4, the site is not supported by an allocation in the Neighbourhood Plan. Neighbourhood Plan Policy 2 concerns small scale and infill development and is supportive of proposals where they (amongst other things) fill a gap in an existing frontage, or on other sites, within the built up area of the village (criterion a). Despite being close to the properties in Green Lane, as set out above, the appeal site is not within the built up area of the village and the proposal would not fill a gap in an existing frontage. As such, it is not supported by Neighbourhood Plan Policy 2.
  19. Additionally, in terms of the sequential approach set out in Local Plan Policy LP4, I have seen no explanation of why sites are not available or suitable in the preferred categories or tiers higher up the list.
  20. I therefore conclude on this main issue that the proposal would fail to provide a suitable site for development having regard to national and local policies which seek to achieve sustainable patterns of development and protect the countryside. This would be contrary to Local Plan Policies LP2, LP4, and LP17 and to Policy 2 of the Neighbourhood Plan. Furthermore, it would be at odds with the core planning principle of the National Planning Policy Framework (the Framework) to recognise the intrinsic character and beauty of the countryside and support thriving rural communities within it.

#### *Biodiversity and protected species*

21. Traditional orchard is a priority habitat listed in the UK Biodiversity Action Plan (BAP) and the Lincolnshire BAP. It is a composite habitat that is important for a range of species and is of a high ecological value. The Lincolnshire BAP recognises that orchards on the edge of settlements are prime locations for development and are under threat. The proposal would lead to the loss of a good deal of the orchard and I share the Council's concerns that pressure to fell more trees would be likely to arise in the future in order to provide useable garden space for the future occupants of the proposed dwelling.
22. The appellant considers that biodiversity enhancements including the replacement of existing trees and on-going management of the retained trees could be secured via a condition requiring an Ecological Enhancement and Mitigation Plan. However, given the extent of the trees that would be lost to the development, I am not convinced that overall the proposal would be likely to lead to an increase in the site's habitat contribution. As such, the proposal

- would have an adverse impact on this priority habitat and would fail to minimise impacts on biodiversity. This would be at odds with paragraph 109 of the Framework which seeks to minimise the impact of development on biodiversity and halt the overall decline in biodiversity by providing net gains in biodiversity wherever possible.
23. Additionally, the appellant has submitted a Protected Species Survey with the appeal which finds that the proposal would have an extremely limited impact on roosting bats, nesting birds and Great Crested Newts. However, the survey indicates that potential bat roosting features were discovered in many of the trees. It recommends that all the trees to be felled should be individually assessed for their likelihood of supporting bats and advises that trees that are to be felled and contain potential bat roosting features will require nocturnal surveys during the optimal season.
24. I share the Council's concerns that this approach is contrary to paragraph 99 of Circular 06/2005 which states that it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Although surveys should only be required where there is a reasonably likelihood of species being present and affected by the development, the Circular advises that surveys should be carried out before planning permission is granted. It is also clear that surveys should only be required by condition in exceptional circumstances.
25. The submitted initial survey finds that the roof void in an outbuilding on the wider site serves as a bat roost. It also explains that excellent connectivity between the site and the wider environment via the mature tree line along the southern boundary, the orchard and nearby hedgerows offers good foraging and commuting potential for bats. Consequently, it seems to me that there is a reasonably likelihood of protected species being present and affected by the development. The initial survey indicates that more detailed survey evidence is required in relation to bats. In the absence of these (and whilst I note the mitigation measures set out in the initial survey), I am unable to determine whether the proposal would have an adverse effect, and if so whether it could be overcome by any proposed mitigation measures.
26. I therefore conclude on this main issue that the proposal would be harmful to biodiversity and protected species. This would be contrary to Local Plan Policy LP21 which requires development to protect, manage and enhance the network of habitats, species and sites of international, national and local importance (statutory and non-statutory) and minimise impacts on biodiversity and geodiversity and seeks to deliver net gain in biodiversity and geodiversity. It would also conflict with paragraph 109 of the Framework.

#### *Living conditions*

27. Three of the proposed bedrooms would each be served by a single north facing high level window. I appreciate that the house is designed to maximise solar gain and its main elevation would be glazed. The bedrooms are not of a size to accommodate sitting or work areas and would be predominantly used at night. I am also aware of the appellant's argument that everyday activities would take place in the living room or dining kitchen or home office.

28. I also accept that north facing windows are not in themselves unacceptable and am content that some natural light would be provided to the bedrooms. However, the high level nature of the windows would mean that no eye level views would be afforded out of them and the future occupiers of those rooms would have no outlook at all. As a result, to my mind the bedrooms would be experienced as unduly closed in and oppressive in nature. I do not regard this to be an acceptable situation in terms of living conditions. Whilst this is the appellant's design choice, I am mindful that the occupation of the dwelling would not be restricted to the appellant. Accordingly, this is not a reason to allow development that would provide an unsatisfactory standard of living conditions and a low quality of life.
29. Although I am aware that the appellant is amenable to negotiation on this point, as set out above, I have determined the appeal on the basis of the submitted plans that were considered by the Council.
30. I therefore conclude on this main issue that whilst it would be acceptable in terms of daylight, the proposal would fail to provide adequate living conditions for future occupiers with particular reference to outlook. This would be at odds with the core planning principle of the Framework to secure a good standard of amenity for all existing and future occupiers of land and buildings.

#### *Highway safety*

31. The proposal fails to provide sufficient on site turning space for delivery and emergency vehicles. These are considered essential by the Council given the proposed access arrangements via a long driveway to the side of No 35. The appellant does not dispute this matter and I see no reason to come to a different view. Although a reason for refusal, the Council acknowledges that the lack of turning space is a relatively simple matter to overcome with amendments. These were not sought during its consideration of the planning application due to the Council's objections to the proposal in principle. Whilst turning details have been provided as part of the appeal, for the reasons set out above, I have determined the appeal on the basis of the submitted plans.
32. I therefore conclude on this main issue that the proposal would be harmful to highway safety, with particular reference to access for delivery and emergency vehicles. This would be contrary to Local Plan Policy LP13 which requires all development to provide well designed safe and convenient access for all (criterion c).

#### *Other matters*

33. Despite the concerns of local residents, the Council raises no objections to the proposal in terms of its detailed design, or its effect on drainage or the living conditions of nearby occupiers. The absence of harm in these regards counts neither for, nor against the proposal.
34. The proposal would provide a custom self-build dwelling for the appellant and represents a windfall site. The Framework seeks to significantly boost the provision of housing growth and the proposal would add to supply. The appellant does not dispute that the Council can demonstrate a 5 year supply of deliverable housing sites, but I am mindful that housing targets are nevertheless a minimum not a maximum. Whilst these are benefits of the proposal, given the scheme's limited scale for a single dwelling, its contribution

in these regards would not be great. Consequently, they are insufficient to outweigh the harm that would be caused to in relation to the main issues in this case.

**Conclusion**

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

*Elaine Worthington*

INSPECTOR