



Appeal Decision

Site visit made on 28 March 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/N2535/W/22/3312024

Land to the east of Church Road, Upton, Gainsborough DN21 5NS

- 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 D Churchill against the decision of West Lindsey District Council.
 - The application Ref 144574, dated 14 March 2022, was refused by notice dated 8 September 2022.
 - The development proposed is application to erect 5 detached dwellings with attached garages.
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Decision

1. The appeal is allowed and planning permission is granted for application to erect 5 detached dwellings with attached garages at Land to the east of Church Road, Upton, Gainsborough DN21 5NS in accordance with the terms of the application, Ref 144574, dated 14 March 2022, subject to the conditions set out in the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Mr D Churchill against West Lindsey District Council. This is the subject of a separate Decision.

Preliminary Matters

3. The appellant submitted a plan of the proposed plot 4 dwelling and refers to that plan as being issue "P" whilst the Council cite "O". Both issue references are included on the plan. The Council has confirmed that the plan was before them when they made their decision. For the avoidance of doubt, within my conditions, I describe the plan with the reference "272021-05 Issue P".
4. In April 2023 since the Council made their decision, the Central Lincolnshire Local Plan has been adopted (the LP) replacing the Central Lincolnshire Local Plan, adopted 2017. The main parties have provided comments on the implications of the adoption of the LP which I have had regard to. In the interests of certainty, I confirm that as Policies LP13 and LP55 of the 2017 Local Plan have been replaced and are no longer part of the development plan I give no weight to them. The Council have confirmed that they identify conflict with only Policies S47 and S67 of the adopted LP and I determine the appeal on that basis.
5. Also following the Council's decision, a unilateral undertaking (UU) has been submitted. The purpose of the UU would be to secure a financial contribution towards affordable housing. I comment on this UU later in my reasoning.

Main Issues

6. The main issues are:

- The effects of the proposed development upon the safety of highway users; and
- The effects of the proposed development upon the availability of best and most versatile agricultural land.

Reasons

Highway safety

7. The appeal site is located off Church Road on the periphery of the village of Upton and within a rural area. The village is predominantly residential in character but is also served by a small array of services. Adjacent to the appeal site, Church Road runs on a north-south axis. Close-by to the site there is also a section of the road which runs on an east-west axis and meets High Street. To the south of this and opposite the appeal site, Main Street also connects with High Street. Farther south still Avenue B meets Church Road, but in the opposite direction this road comes to a dead end. Therefore, Church Road and Main Street provide the main highways in the immediate environs of the site which would be travelled along by any occupants or visitors of the proposed development.
8. Presently, Church Road has only limited stretches of dedicated footpath. Main Street has dedicated footpaths on both sides of the road for the entirety of its route between Church Road and High Street. During my visit I noted that the width of Church Road in particular varies and, that the section with the east-west alignment is consistently narrow.
9. The development would be served by 2 access points on Church Road. In the proposal, sections of existing site boundary hedgerow adjacent to Church Road would be removed or trimmed. In the vicinity of the proposed access points, Church Road has a gentle curvature with no sharp bends. Given this road alignment and the hedgerow works proposed, I have no reason to conclude that visibility at the access points would be deficient. Whilst each dwelling proposed would contain 4 bedrooms and each would be served by a driveway and a double garage, only 5 dwellings in total are proposed. With 2 access points proposed, vehicular movements in and out of the proposed development would be split. Consequently, I am satisfied that neither access would be the subject of significant traffic movements. Furthermore, given the size of Upton, the rural nature of the area, the number of properties which gain access via Church Road and, given that at its far southern end Church Road provides for no through route, it is reasonable to conclude that it is quite lightly trafficked by all highway users. Taking all these factors into account, the proposed vehicular access arrangements would be safe.
10. The narrower sections of Church Road will mean that along these stretches of the road only a single lane for vehicular passage will presently be possible. There will be reliance upon drivers giving way to one another as necessary and reversing manoeuvres, so that one vehicle can negotiate past another, will likely be required at times. Furthermore, given the sporadic footpath provision, should pedestrians be walking along the narrower sections of Church Road in particular or, cyclists be travelling on the carriageway, some interactions

between these various highway users may take place. Even accounting for the footpath proposed along the site frontage, the limited footpath provision that serves Church Road would subsist and no change to the carriageway would occur. Some additional movements by all highway users would result from the development and, therefore, could add to any existing interactions. However, given the scale of the development proposed the increase in vehicular, pedestrian and cycle movements would be low and I find that as such there would not be an unacceptable risk of accidents or impact on highway safety, and the residual cumulative impacts on the road network would not be severe.

11. In reaching the above findings, I have taken into account that the dedicated footpath proposed alongside Church Road would, at one end, terminate opposite Main Street. At this point, a pedestrian would be able to cross the Church Road carriageway to the footpaths that would be opposite at the junction with Main Street. The footpaths on either side of Main Street provide continuous walking routes through to High Street. Given that High Street provides access to much of the rest of the village, including some services, it is reasonable to conclude that it would provide a common destination for pedestrian movements arising from the proposed development. Such movements would be well provided for by the Main Street link. Therefore, whilst movements along sections of Church Road without footpaths may remain necessary or more convenient for some pedestrians, the Main Street route provides an alternative option to connect to High Street and one which also remains convenient. This route would also be available for motorists and cyclists.
12. I accept that the Main Street carriageway does contain a quite sharp bend within it and some parking will doubtless take place within the carriageway which may necessitate drivers to give way to one another. However, given the footpath provision, interactions with pedestrians should seldom take place. The footpaths would not remove the potential for interactions with cyclists, however, the width of the road is consistent, is not very narrow and, overall, I find that Main Street provides a safe environment for all highway users.
13. The construction phase of the development would necessitate the comings and goings of large vehicles. As there are some compromised aspects of the highways around the site some disruption on the roads could well occur and potential conflict between these larger vehicles and other highway users cannot be ruled out. However, the comings and goings of such vehicles would be intermittent and would only be necessary for the temporary duration of the build. Furthermore, through the imposition of a condition, a construction method statement can be devised, the measures within which would assist in moderating the effects of the construction phase vehicle movements to avoid any unacceptable impacts on highway safety.
14. Amongst other matters, public representations submit that the proposed rear field access is excessive in comparison to the current access and could encourage large farm vehicle movements. No hard surfaced route currently provides access to the farmland to the rear of the site and therefore, the proposed route would represent a significant upgrade of any existing access arrangements to this end. Even so, I have no substantive evidence before me that any intensification of farm activities on adjacent land is proposed. It is submitted that Church Road contains potholes and during my visit I did see areas of the carriageway with some defects but nevertheless given the

evidence before me, coupled with my own observations on site, the surface condition of Church Road would suitably and safely accommodate the development. Concerns are also put to me in relation to the visibility at junctions on High Street. However, I have no substantive evidence that the visibility is presently unacceptable and, moreover, the number of additional movements that the development would generate at any junction on the local highway network would be low. As such the development would not unacceptably increase the risk of accidents or compromise highway safety.

15. Having regard to all of the above, I conclude that the effects of the development upon the safety of highway users would be acceptable. I acknowledge that the Highway Authority, who raised no objections to the development, are a consultee and, as a local planning authority, the Council can come to a different conclusion on the scheme. Despite this, for the above reasons, I have nevertheless found that the development would be acceptable and, in that regard, agree with the Highway Authority. The development would therefore accord with Policy S47 of the LP. In summary, and amongst other matters, this policy requires that development proposals contribute towards an efficient and safe transport network and states that development that would result in severe transport implications will not be granted planning permission unless there is adequate mitigation.

Agricultural land

16. The LP defines best and most versatile agricultural land as land in grades 1, 2 and 3a of the Agricultural Land Classification. The appeal site is identified as grade 3 but the evidence of neither the appellant nor of the Council identifies whether the land is grade 3a, 3b or a combination of the two. Grade 3b is not best and most versatile agricultural land. Therefore, what proportion of the appeal site constitutes best and most versatile agricultural land, if any at all, is unknown. At the time of my visit the land appeared to be largely unused, with no evident crop production or grazing of animals, and I observed that gaps in boundary hedging would likely preclude its productive use for agriculture in current circumstances. As such although the development would lead to the loss of agricultural land, in the absence of any contrary evidence, I reasonably find that the land does not appear to be of the highest quality and its loss would not be significant nor compromise food security.
17. In reaching the above findings, I have taken into account that the Council made its decision on the basis of Policy LP55 Part G of the previous LP insofar as it related to best and most versatile agricultural land and that it has now been replaced by Policy S67 of the LP. The newly adopted Policy S67 of the LP introduces a different approach in supporting significant development resulting in loss of best and most versatile agricultural land only where in accordance with four listed criteria, and as such seeks alignment with paragraph 174 of the National Planning Policy Framework (the Framework) and its associated footnote 58. In that regard, Policy S67 only requires the submission of an agricultural land classification report necessary to demonstrate compliance with the criteria applicable to 'significant development' where proposals are for sites of 1ha or larger. To my mind, it reasonably follows that as this proposal would involve the loss of less than 1ha of agricultural land, where there is no clear evidence that it is best and most versatile land, it would not be 'significant development resulting in loss of best and most versatile land' for the purposes of Policy S67 of the LP and, therefore, would not conflict with it.

18. Having regard to all of the above, I conclude that the proposed development would not have an unacceptable impact upon the availability of best and most versatile agricultural land. The proposal does not conflict with Policy S67 of the LP or the Framework in that respect.

Other Matters

19. I have no reason to conclude that through the implementation of a detailed drainage design, which can be controlled via condition, that the development could not be adequately drained and thereby ensure that the risk of flooding to either highway land or neighbouring property is not increased as a result of the development. Whilst at times road flooding may occur within the area, together with, and as a consequence, mud being left on the highway, I have very limited detail of the precise nature or scale of such issues. I am satisfied that those issues would be infrequent and of a limited duration and therefore, would not have an unacceptable impact on local highway conditions or the safety of highway users.
20. Representations have expressed concern that the Preliminary Ecological Appraisal (PEA) inaccurately describes the age of a nearby pond and the extent to which it provides habitat for some species. It is also raised that the development will, or may, affect hedgehogs, newts, and various birds. However, I firstly have no compelling evidence before me of the extent to which the pond may be utilised as habitat by the cited species nor that the proposed development would be likely to result in any harm to them. Furthermore, the submitted PEA acknowledges that the Great Crested Newt, a European Protected Species, may utilise the field margins and areas beneath the site hedgerows but it also finds that the grassland on site offers generally poor terrestrial habitat for the species. In relation to hedgehogs and birds, the PEA identifies that the site and area contain habitats suitable to support the West European hedgehog and, foraging and nesting opportunities for some bird species albeit, and contrary to a public representation made, the barn owl is considered unlikely to hunt on the site. Furthermore, the PEA was compiled in the knowledge that the development would result in the loss of hedgerow. I have no reason to conclude that the PEA or the Ecological Update Assessment undertaken since, has not had proper regard to the potential effects of the development upon habitats and species nor to the scope of suitable mitigation and enhancement measures. These include measures for nesting birds, bats, badgers, hedgehog and brown hares, that can be secured by condition and would ensure no unacceptable harm in those respects.
21. Via the imposition of a condition, the scope of works to trees and hedgerows, would be limited to that identified on the submitted Landscape Masterplan and Tree Protection Plan. Amongst other matters, these drawings depict some hedgerow removal, its cutting back and trimming, ground protection and barrier protection requirements for trees and, proposed planting. I have no reason to conclude that the protection measures therein would be defective or that damage to any trees would ensue that would be likely to result in consequential damage to property. Furthermore, in combination, the retained and proposed planting would provide for a suitably landscaped development.
22. I have no compelling evidence that the rear field access is proposed to serve a further development. If such a development were proposed and, should it require planning permission, the Council would be able to consider the merits

of the scheme at that time. Therefore, this matter is not a determinative factor in my decision.

23. I have no substantive evidence to conclude that the scale of the development proposed would result in any undue pressures upon local services. The size of the houses may exceed those which were previously approved under an earlier outline planning permission. However, as a separate proposal, the housing proposed under this scheme should be considered on its own merits. Furthermore, although there are bungalows nearby to the site, there are also large 2 storey properties and in this context, the dwellings proposed would not harm the character or appearance of the village.
24. The signed UU would provide a financial contribution to be utilised for the purposes of the delivery of affordable housing. Policy S22 of the LP sets out that affordable housing will be sought on sites of 0.5ha or more and the site exceeds this threshold. I note the comments of the Council's Homes, Health and Wellbeing Team Manager that an off-site payment in lieu of on-site delivery is appropriate in this case, and I have no substantive evidence before me to disagree. Therefore, and whilst the affordable housing contribution may not be utilised within the village or Parish, I nevertheless, find that this contribution is necessary to make the proposed development acceptable and is directly related to the appeal scheme. The Council have confirmed to me that the financial contribution has been calculated in accordance with a methodology set out within a supplementary planning document. The contribution would, therefore, be fairly and reasonably related to the proposal in scale and kind. Whilst it is put to me that more affordable housing would be welcomed, only a single affordable dwelling or the equivalent financial contribution would be necessary to comply with Policy S22 and, therefore, additional provision would not be necessary to make the development acceptable in planning terms. The planning obligation would meet the requirements of the Framework and the CIL Regulations. I therefore give it significant weight in the determination of this appeal.
25. It is also put to me that, as an alternative, the financial contribution could be utilised towards improvements to Church Road. However, in the main issues, I have identified that the effects of the proposed development upon the safety of highway users would be acceptable. It follows that a contribution towards road improvements would not be necessary to make the development acceptable in planning terms.

Conditions

26. I have imposed the standard condition in respect of time limitation and a plans condition in the interests of clarity. I have imposed a condition requiring the devising of a construction method statement so as to ensure that the effects of construction on the living conditions of neighbouring occupiers would be acceptable. Within this condition, I have omitted the requirement to submit details of vehicular routing that was within the Council's suggested wording. This is because it would not be appropriate for the condition to seek to exercise control of the right of passage over public highways. However, the condition does include a requirement to detail a construction access and any associated directional signage which would, similarly, serve to mitigate the effects of construction vehicle movements. This condition is a pre-commencement condition. This is necessary as development cannot commence without the

measures to control construction works being agreed in advance. I note that concerns have been raised of instances where builders have not adhered to conditions placed upon them. Should instances of non-compliance take place or alleged non-compliance, this would be a matter for planning enforcement investigation.

27. The site has been identified as being within an area of archaeological potential, including due to its location within the boundary of a medieval village. Given the potential for archaeological remains to be present within the site, so as to allow this to be investigated, monitored and, as necessary, any remains analysed, recorded and archive deposits made, condition 4 is necessary. So as to enable this detail to be agreed before the ground is affected, it is a pre-commencement condition. Condition 4 requires provision to be made for the analysis of the site investigation and recording and, any ensuing publication, dissemination and archive deposition requirements. Therefore, whilst the Council suggested further conditions relating to the development being carried out in accordance with the Written Scheme of Investigation, archaeological analysis and deposition, I am satisfied that the wording of the condition I have imposed sufficiently addresses these matters.
28. I have imposed condition 5 so as to ensure that suitable ecological mitigation and enhancement measures are implemented. This is also a pre-commencement condition as ecological interests could otherwise be harmed as soon as development commences. A drainage condition is needed to ensure that the development is adequately drained in regard to both surface and foul water. The Council suggested a further condition requiring all hardstandings to be permeable in the interests of reducing the risks of flooding. However, the condition I have imposed requires a comprehensive scheme for the management of surface water in the interests of flood risk and this may include the use of permeable surfaces. Therefore, no further condition is necessary.
29. In the interests of pedestrian safety and surface water management, I have imposed a condition so that the precise detail of the footpath proposed alongside Church Road is agreed. Section 197 of the Town and Country Planning Act 1990 (as amended) places upon me a duty to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation of trees. Having regard to this, and in the interests of the character and appearance of the area, I have imposed condition 8.
30. Finally, it is submitted to me that all conditions imposed on an earlier grant of planning permission should be imposed on this development. However, each development must be assessed on its own merits and conditions should only be used where they satisfy the tests for their imposition including that they are necessary and relevant to the development to be permitted.

Conclusion

31. For the above reasons, I conclude that the appeal is allowed subject to the conditions in the following schedule.

H Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: OS Map data Site Location Plan, 272021-02 Issue A, 272021-03 Issue O, 272021-04 Issue O, 272021-05 Issue P, LMP-221221-02 Revision B and TPP-211221-01 Revision A.
- 3) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - a) details of any temporary construction accesses to the site including measures for their removal following completion of construction works and any associated directional signage;
 - b) the parking of vehicles of site operatives and visitors;
 - c) loading and unloading of plant and materials;
 - d) storage of plant and materials used in constructing the development;
 - e) the erection and maintenance of security hoarding;
 - f) wheel washing facilities;
 - g) measures to control the emission of dust and dirt during construction;
 - h) measures to control the emission of noise during construction;
 - i) a scheme for recycling/disposing of waste resulting from construction works;
 - j) the hours during which deliveries and construction may take place including the operation of any plant and machinery.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) an assessment of significance and research questions;
 - b) the programme and methodology of site investigation and recording;
 - c) the programme for post investigation assessment;
 - d) the provision to be made for analysis of the site investigation and recording;
 - e) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - f) the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - g) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

The developer shall give the local planning authority, in writing, 14 days advance notice of the start of the archaeological investigations.

Development shall be carried out in accordance with the approved Written Scheme of Investigation.

- 5) No development nor any vegetation clearance or removal shall commence until a scheme of ecological mitigation and enhancement measures, inclusive of a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall, amongst its content, include:
- a) external lighting details;
 - b) conformation that all vegetation clearance and removal shall take place so as to avoid the bird nesting season;
 - c) measures to prevent mammals being trapped within open excavations;
 - d) site fencing details which shall permit for access and egress of hedgehogs; and
 - e) details of the provision of two open fronted bird nest boxes, two small holed bird nest boxes, a starling nest box and two bat boxes inclusive of their design and location.

Development shall be carried out in accordance with the approved details.

- 6) No construction works above ground level shall take place until a scheme of surface and foul water drainage works has been submitted to and approved in writing by the local planning authority. No building hereby permitted shall be occupied until the scheme of drainage works has been implemented in accordance with the approved details. The submitted scheme of drainage works shall incorporate Sustainable Drainage Systems (SuDS) unless it is clearly demonstrated as a part of the scheme submission that SuDS are not technically, operationally or financially deliverable or viable or, that the SuDS would adversely affect the environment or safety.

Where SuDS are to be provided, the submitted scheme shall, amongst its content, include:

- a) the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
 - b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 7) No building hereby permitted shall be occupied until the 2m wide footpath proposed alongside Church Road as identified on plan 272021-02 Issue A has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The details of the footpath submitted for approval shall include:
- a) the layout and alignment of the footpath;
 - b) the detail of its construction and material finish; and
 - c) arrangements for the management of surface water run-off.

The footpath shall be retained thereafter.

- 8) All works to trees and hedgerows shall accord with the details on plans TPP-211221-01 Revision A and LMP-221221-02 Revision B. No site clearance, preparatory work or other development shall take place until all trees and hedgerows identified for retention on plan TPP-211221-01 Revision A have

been protected in accordance with the details shown on the same plan. The protection measures shall be retained until the completion of the development works.

End of Schedule