The Planning Inspectorate

Appeal Decision

Site visit made on 30 August 2016

by Michael Boniface MSc MRTPI

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

Decision date: 01 September 2016

Appeal Ref: APP/A2525/W/16/3151299
Land at Small Drove, Weston, Spalding, PE12 6HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Larkfleet Homes against South Holland District Council.
- The application Ref H22-0970-15, is dated 8 October 2015.
- The development proposed is 45 residential dwellings and associated garages and infrastructure.

Decision

1. The appeal is allowed and planning permission is granted for 45 residential dwellings and associated garages and infrastructure at Land at Small Drove, Weston, Spalding, PE12 6HU in accordance with the terms of the application, Ref H22-0970-15, dated 8 October 2015, subject to the conditions contained in the attached Schedule.

Preliminary Matters

2. The Council did not issue a formal decision in this case but has since confirmed that it would have refused planning permission, had it been empowered to do so, for the following reason: *"The development as submitted provides less than 14% of the gross site area as public open space. By virtue of this proposed underprovision, the character of the development as a whole is considered to be at odds with the prevailing character of the immediate vicinity, which is semi-rural in nature, and the wider character of the village. As such, the proposal is contrary to Policies HS11 and SG14 of the South Holland Local Plan (2006). These policies seek the appropriate provision of on-site open space and development that has a positive effect on the character and appearance of the locality. They are in general conformity with national guidance contained in Section 7 of the National Planning Policy Framework, 2012"*.

3. The Council accepts that it cannot currently demonstrate a deliverable five year housing land supply as required by paragraph 47 of the National Planning Policy Framework (the Framework). In this context, relevant policies for the supply of housing should not be considered up-to-date[1], including but not limited to, Policies HS7 and SG2 of the South Holland Local Plan (2006) (LP) which seek to restrict development in the countryside and prioritise the use of brownfield land, amongst other things. This limits the weight that I attach to

[1] Paragraph 49 of the Framework

these policies, notwithstanding that the development is in conflict with them. The Council agree that the appeal should be considered in the context of the presumption in favour of sustainable development and the relevant decision making criteria outlined at paragraph 14 of the Framework.

4. No specific policies in the Framework indicating that the development should be restricted have been identified and so permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. I have considered the appeal on this basis.

Main Issue

5. In light of the above, the main issue is the effect on the character and appearance of the area, with particular regard to open space provision.

Reasons

Character and appearance, with particular regard to open space provision

6. Policy HS11 of the LP requires that new residential development make provision for open space in accordance with its adopted standards of 14% of the gross site area. However, the policy is clear that where the development is adjacent to or in close proximity to a sufficient sized area of existing open space the Council will accept, in appropriate circumstances, financial contributions from developers for the provision of open space off site or enhancement of existing open space if required to meet the needs arising from the development.

7. In this case, a large playing field exists to the east of the site providing public open space including a football pitch, skate park and equipped play area. It seems to me that this space could be readily utilised by future residents of the proposed development. This is not disputed by the Council, nor has any evidence been provided to suggest that the space is insufficient to meet the needs arising from the development.

8. I attach only moderate weight to the benefit of the proposed dry pond, forming part of the drainage proposals, as its usability cannot be relied upon, particularly in inclement weather. However, during dry periods the space could perform a function as informal open space and would clearly provide a visual function contributing to the spaciousness of the site. Regardless, the appellant seeks to provide a financial contribution calculated in accordance with the Council's Open Space in New Residential Developments Supplementary Planning Document (Open Space SPD) as requested by the Council during the course of the planning application with reference to Policy HS11.

9. The Council now expresses a preference for the open space provision to be made on-site, citing concerns over character and appearance, though little explanation or evidence to support its concerns is provided. The form and density of the proposal does not appear dissimilar to that of other built up areas of the village, particularly on the site frontage along Small Drove where the larger dwellings and plots would be sited. Coupled with the proposed landscaping, dry pond feature, proximity to a large area of established open space and the site context, surrounded by open countryside, the proposal would not appear overdeveloped or discordant in the context of its surroundings.

10. Other concerns have been raised by local people with regard to the design and appearance of the development including the housing mix, density and elevation design but I do not consider these concerns to be well founded. The development would provide a mix of house types and sizes which the Council note are broadly consistent with the need identified in the latest Strategic Housing Market Assessment, as well as 15 affordable dwellings for which there is a demonstrable need in the area. The Council identify that a density of around 25 dwellings per hectare would be achieved and this is relatively low but reflective of the surroundings and the sites location on the periphery of the settlement. This does not suggest an overdevelopment of the site and I see no reason to conclude that this would be the case.

11. The submitted Planning, Design and Access Statement (October 2015) outlines the design rationale adopted, seeking to reflect local vernacular but noting that the surrounding area is an eclectic mix of house types and styles, not characterised by any strong or distinctive style that need be replicated. It seems to me that the proposed development would adequately reflect the surroundings which involve modern residential development in the immediate vicinity of the site.

12. The development would not harm the character and appearance of the area and I find no conflict with Policies HS11 or SG14 of the LP which allow for financial contributions in lieu of on-site open space provision where sited close to existing provision; and require appropriate design and layout in new development.

Other matters

Principle of development

13. I have already noted that the Council's development plan policies affecting the delivery of housing are out of date and attract limited weight. The Framework seeks to boost significantly the supply of housing and the contribution that would be made by this development, both of market and affordable housing, would be a significant benefit, particularly in light of the Council's recognised deficiency of housing land. I have also had regard to the Council's emerging South East Lincolnshire Local Plan and whilst this attracts only limited weight given its stage of preparation, its indication that Weston will accommodate a significant amount of residential development and draft allocation of the appeal site are pertinent. The Council does not object to the principle of residential development on this site and I have no reason to reach a different conclusion.

Agricultural land

14. The site is classified as grade 1 agricultural land, representing best and most versatile agricultural land in the terms of the Framework. However, the Council confirm that much of the district falls within this definition and that insufficient poorer quality land exists to meet the housing requirements of the area. As such, some loss will be necessary and the loss of a modest area to accommodate the proposed development, whilst weighing against the proposal, is not considered to be significant.

Flooding and drainage

15. The site is located within Flood Zone 3 as defined by the Environment Agency and a detailed Flood Risk Assessment (December 2015) (FRA) accompanies the

application. The FRA demonstrates application of the sequential test required by the Framework and concludes that the site is appropriate for the development with a low risk of flooding.

16. A drainage strategy and a number of flood risk mitigation measures are proposed and these could be secured by way of a condition if planning permission were to be granted, as could details of the proposed management company. A Sustainable Urban Drainage System (SUDS) is proposed involving roadside swales and a 'dry pond' and the infrastructure would ensure that the existing Greenfield run-off rate is not exceeded. New foul drainage infrastructure is also to be provided and Anglian Water confirms that there is capacity in the network to support the development. The Environment Agency, the South Holland Internal Drainage Board (IDB) and the County Council as Lead Local Flood Authority have all considered the proposals and raise no objection.

17. Whilst I have had regard to the concerns raised by local people, there is no evidence before me that leads me to conclude that the development would be at risk of flooding, or that it would cause flooding elsewhere. Any permission needed from surrounding land owners for discharging surface water are a matter for the appellant.

Highway safety

18. The development would deliver 45 dwellings, a relatively modest number, likely to have a very limited impact on the surrounding highway network. A range of highway improvements are proposed to facilitate safe access to the site. Small Drove is a narrow country road without pavements and it is proposed that this be widened between Broadgate and the site access, making provision for two cars to pass one another and introducing a footpath. Whilst the remainder of Small Drove would not be widened, a footpath would be provided along the periphery of the site allowing pedestrians to be separated from vehicular traffic for the length of the site, terminating close to the entrance of the existing playing fields. The applicant expects that this would be adopted by the Local Highway Authority (LHA), who has not indicated otherwise. However, if it were not adopted, the appellant suggests that a management company be used in a similar vein to the SUDS maintenance.

19. I note concerns that the footpath would terminate short of the playing field entrance but the LHA suggest that traffic flows are modest on Small Drove and at relatively low speeds. Furthermore, good visibility appeared to be available at this point, notwithstanding the bend in the road. A narrow grass verge is also available for refuge. Onward journeys in this direction towards the local primary school and shop would be along the unaltered Small Drove, requiring pedestrians to walk on the carriageway. Given the highway conditions noted by the LHA this is not necessarily a problem, though it may be undesirable for small children to be utilising this route. However, I have had regard to the existence of alternative routes, including along Wimberley Close where footpaths are available, and note that the school would still be accessible via a short walk.

20. The LHA is satisfied that the proposed highway arrangements, including parking provision in excess of 2 spaces per dwelling on average, would be safe and appropriate for the proposed development. In light of my own considerations above, I have no reason to disagree.

Living conditions

21. The Council has undertaken a detailed assessment of the effects of the development on neighbouring properties, finding that all are sufficiently removed, or are orientated so as to avoid any harmful impact on the living conditions of neighbouring occupants and I concur with this assessment.

22. Whilst it is likely that there would be some noise and disturbance to neighbouring occupants' during the construction of the development, this would be time limited for the duration of the works and these effects can be minimised by securing a Construction Management Plan.

Ecology

23. The application is accompanied by an Ecological Scoping Survey (September 2015) which confirms that the site is of low ecological value and includes a range of recommendations to maintain and enhance the value of the site. Subject to these recommendations being secured by condition, no harm would result to ecology.

Infrastructure

24. Concerns are raised by local people that local services and facilities are unable to accommodate the development but no objections have been raised by local infrastructure providers and there is no evidence before me to suggest any undue strain. The Council is content that no adverse impacts would result and I have no reason to reach a different conclusion.

Planning Obligations and affordable housing

25. As set out above, Policy HS11 of the LP provides for the payment of a financial contribution in lieu of providing on-site open space. The relevant figure has been calculated in this case to be £16,193.00 in accordance with the Council's Open Space SPD. The appellant has provided a Unilateral Undertaking to secure this contribution.

26. The figure sought derives from a generic formula based upon the likely population generated by the development and the levels of open space needed in respect of the corresponding increase. However, the Council has not put forward any evidence to explain how the existing open space close to the site has been taken into account and whether, therefore, there is in fact a need for any additional open space or enhancement of existing facilities. Furthermore, no information is provided as to how the contribution would be spent. As such, I am unable to conclude that the contribution is necessary as a result of the development and otherwise meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have not taken it into account.

27. Policy HS8 of the LP requires the provision of at least one third of new residential development as affordable housing and this is accepted by the appellant; 15 affordable units are proposed. The Council suggest that its normal practice is to require such provision as a planning obligation and this usually provides the greatest certainty for all parties involved. However, whilst accepting the requirement, the appellant suggests that the affordable housing should be secured using a condition. Such conditions are usually only justified in exceptional circumstances but the provision is clearly necessary in this case

and there is no dispute between the parties regarding the requirement. Furthermore, whilst diverging from the Council's normal practice, no explanation has been given as to why a condition would be inappropriate. In this case, I have no reason to believe that a condition would not be effective in securing the required affordable housing and to dismiss the appeal in the absence of a planning obligation would not be consistent with the need to boost significantly the supply of housing. I attach significant weight to the benefit that would arise in contributing to the need for affordable housing in the area.

Conditions

28. The Council has proposed a number of conditions in the event that planning permission is granted and the appellant does not object to these. I have altered the wording as necessary to improve their precision and ensure compliance with Planning Practice Guidance. I have attached the statutory time period for commencement of development and clarified the approved plans and documents in the interests of certainty.

29. I have found it necessary to impose a condition requiring investigation and remediation of any site contamination in the interests of public health. Details of the proposed materials, landscaping and boundary treatments of the site are secured to ensure an appropriate appearance for the development, though I am not persuaded that details of minor appendages such as metre boxes or gas flues is justified in this case. A Management Plan and Maintenance Schedule are required in respect of all areas of public open space and communal areas to maintain the character of the area.

30. Conditions are attached to ensure that the proposed highway improvements to Small Drove are carried out, that the site junction is completed and that internal roads and footpaths are implemented at appropriate times, in the interests of highway safety. For the same reason, a scheme to prevent the deposit of mud and other materials on the public highway is also secured.

31. A detailed surface water drainage scheme is required to prevent flooding, along with details of future maintenance to ensure effective operation. In addition, properties are to be set 300mm above existing ground levels. A construction management plan is required to minimise the construction impacts of the development on the living conditions of neighbouring occupants. Measures to mitigate the impact of the development on bats and birds are secured. The provision of fire hydrants is necessary to ensure a safe development for future occupants. Finally, a condition requiring the provision of the required affordable housing is attached in accordance with my conclusions above.

Conclusion

32. The development would not harm the character and appearance of the area and there are no other adverse impacts, even cumulatively, that would significantly and demonstrably outweigh the benefits of the proposal. As such, the proposal represents sustainable development in the terms of the Framework, to which the presumption in favour applies. Planning permission should therefore be granted and the appeal is allowed.

Michael Boniface

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 and documents: Location Plan (1:1250), PL-01B, 2110/A00/DS, 2224/A00/DS, 2306/A00/DS, 2308/A00/DS, 2323/A00/DS, 2324/A00/DS/AS, 2404/A00/DS/AS, 2410/A00/DS/AS, 2425/A00/DS/AS, 2427/A00/DS/AS, 2428/A00/DS/AS, 2502/A00/DS/AS/01, 2502/A00/DS/AS/02, 2508/A00/DS/AS, 2509/A00/DS, GARAGES-SINGLE, GARAGES-DOUBLES, GARAGES-PAIR, GARAGES-TRIPLE and S3870/01; Flood Risk Assessment (ref: MA10147-FRA-R02, dated December 2015), Revised Ecological Scoping Survey (prepared by Hillier Ecology Limited, received 3rd November 2015).

3) The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority (LPA) and until the measures approved in that scheme have been implemented. The scheme shall include all of the following measures:

   i) a desk-top study carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two full copies of the desk- top study and a nontechnical summary shall be submitted to the LPA without delay upon completion.

   ii) if identified as being required following the completion of the desk-top study, a site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed taking into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be forwarded to the LPA without delay upon completion.

   iii) thereafter, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site shall be submitted to and approved in writing by the LPA, and all requirements shall be implemented and completed to the satisfaction of the LPA. No deviation shall be made from this scheme. If during redevelopment contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing by the LPA.

   iv) two full copies of a full closure report shall be submitted to and approved in writing by the LPA. The report shall provide verification that

the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post-remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met.

4) Notwithstanding the submitted information, before the commencement of the development hereby permitted, a schedule of external materials of construction of buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the materials so approved.

5) Notwithstanding the submitted information, before the commencement of the development hereby permitted, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for the site indicating, inter alia, the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance. Such scheme as is approved by the Local Planning Authority shall be carried out in its entirety within a period of twelve months beginning with the date on which development is commenced. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be replaced with planting of a similar size and species.

6) Notwithstanding the submitted information, prior to its installation, details of the proposed boundary treatment, including a schedule of materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the development is first brought into use.

7) Before the commencement of development hereby permitted, a management plan for the areas of publicly accessible open space, including management responsibilities and maintenance schedules, shall be submitted to and approved in writing by the Local Planning Authority. The management of these areas shall be carried out in accordance with the details so approved.

8) Before the commencement of development hereby permitted, details of the landscape management and maintenance schedule for the areas of incidental open space, refuse/recycling collection points and parking courts/private drives shall be submitted to and approved in writing by the Local Planning Authority. Thereafter these areas shall be maintained in accordance with the approved details.

9) No other part of the development hereby permitted shall be commenced until such time as the section of the carriageway of Small Drove, between its junction with Broadgate and the site entrance, has been widened and improved and a 1.8 metre wide footway has been provided along the same section of highway, in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. Thereafter, all delivery vehicles, construction traffic and site personnel shall use only this improved section of Small Drove and the access shown on the submitted drawing PL-01B (dated 17/12/15) as a means to access to and from the permitted development site.

10) Before each dwelling (or other development as specified) is occupied the roads and/or footways providing access to that dwelling, for the whole of its frontage, from an existing public highway, shall be constructed to a specification to enable them to be adopted as Highways Maintainable at the Public Expense, less the carriageway and footway surface courses. The carriageway and footway surface courses shall be completed within three months from the date upon which the erection is commenced of the penultimate dwelling.

11) No dwellings (or other development as specified) shall be commenced before the first 50 metres of estate road from its junction with the public highway, including visibility splays, as shown on drawing number PL-01B dated 17/12/15 has been completed.

12) Before any dwelling is commenced, all of that part of the estate road and associated footways that forms the junction with the main road and which will be constructed within the limits of the existing highway, shall be laid out and constructed to finished surface levels in accordance with details to be submitted and approved by the local planning authority.

13) No development shall take place until a surface water drainage scheme for the site, based on sustainable urban drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall:

a) Provide details of how run-off will be safely conveyed and attenuated during storms up to and including the 1 in 100 year critical storm event, with an allowance for climate change, from all hard surfaced areas within the development into the existing local drainage infrastructure and watercourse system without exceeding the run-off rate for the undeveloped site;

b) Provide attenuation details and discharge rates which shall be restricted to 1.4 litres per second;

c) Provide details of the timetable for and any phasing of implementation for the drainage scheme; and

d) Provide details of how the scheme shall be maintained and managed over the lifetime of the development, including any arrangements for adoption by any public body or Statutory Undertaker and any other arrangements required to secure the operation of the drainage system throughout its lifetime.

The development shall be carried out in accordance with the approved drainage scheme and no dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with the approved phasing. The approved scheme shall be retained and maintained in full accordance with the approved details.

14) A detailed scheme of construction management to minimise disturbance during the construction process through noise, dust, vibration and smoke shall be submitted to and approved in writing by the Local Planning Authority before the development commences and the construction process shall be carried out in accordance with the scheme so approved.

15) Details of the precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from the site during construction of the development shall be submitted to and approved in writing by the Local Planning Authority before the development commences. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority. These precautions shall be made available before commencement of the construction of the development and be kept available and in full working order until such time as the Local Planning Authority agrees in writing to their withdrawal or the completion of the development.

16) In accordance with the mitigation measures to protect bats and birds as outlined in the Revised Ecological Scoping Survey (prepared by Hillier Ecology Limited), before the commencement of the development, full details (including the timing of their installation) of the bat boxes and artificial barn swallow and house martin nests to be installed on site shall be submitted to, and approved by, the Local Planning Authority.

17) No development shall commence until a scheme for the provision of infrastructure to ensure the availability of water supplies to the Fire Service in the event of an emergency, have been submitted to and approved in writing by the Local Planning Authority. The details as approved, including timings, shall be fully implemented before the development is first brought into use and shall be retained thereafter.

18) Finished floor levels shall be set 300mm above average ground levels in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

19) No development shall take place until a scheme for the provision of affordable housing as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

    i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 33.33% of housing units;

    ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

    iii) the arrangements for the transfer of the affordable housing to an affordable housing provider;

    iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

    v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

    The affordable housing shall be retained in accordance with the approved scheme.