
Appeal Decision

Hearing Held on 24 October 2017

Site visit made on 24 October 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 23rd November 2017

Appeal Ref: APP/A2525/W/17/3177564

Low Lane, Holbeach, Lincolnshire

- 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 Benchmark Properties against the decision of South Holland District Council.
 - The application Ref H09-0454-15, dated 15 May 2015, was refused by notice dated 4 April 2017.
 - The development proposed is described as a “residential development of 43 dwellings”.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development of 39 dwellings at Low Lane, Holbeach, Lincolnshire in accordance with the terms of the application, Ref H09-0454-15, dated 15 May 2015, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by Benchmark Properties against South Holland District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The description of development given in my formal decision differs from that provided on the planning application form. The revised description reflects alterations to the development that were made at the application stage that reduced the total number of dwellings from 43 to 39.

Main Issue

4. The main issue in considering this appeal is whether the development would result in unacceptable living conditions for future occupiers of the development with regard to outlook and natural light.

Reasons

5. There is no dispute that the Council is currently unable to demonstrate a 5 year supply of housing sites, as required by the National Planning Policy Framework ('the Framework'). In these circumstances, paragraph 49 of the Framework

states that relevant policies for the supply of housing should not be considered up-to-date.

6. Where paragraph 49 of the Framework applies, paragraph 14 states (unless material considerations indicate otherwise) that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. I return to this matter in the overall balance, below.

Living conditions

7. The appeal site is located in close proximity to the A17, which is a major road. In order to mitigate noise from the A17, the development proposes a continuous 3.6 metre high acoustic fence along the rear boundaries of the proposed dwellings. The distance between the rear elevations of the properties and the acoustic fence would vary. However, it would be at its narrowest in relation to plots 1, 14, 15, and 37. At the Hearing, these distances were measured as being between 7 and 8.5 metres by the Council, and agreed by the appellant.
8. The appellant submitted a series of indicative drawings at the Hearing to illustrate how the acoustic fence could be designed. These identified 3 different approaches that would make use of different designs and materials. In this regard, I note that the submitted noise report states that *"any material can be used to construct the acoustic barrier, provided it has a minimum surface density of 10 kg/m²".* A number of options are available, which could include either a transparent upper section to allow light through, or a green fence design that would provide a softer outlook. From the evidence before me, I am satisfied that a solution could be secured that would provide an appropriate level of outlook and natural light to the rear of the properties. In this regard, details of the design and construction of the fence could be subject to an appropriately worded condition. Whilst the distance between the fence and the properties would be narrow in places, an appropriate design could minimise any sense of enclosure at the rear. Moreover, the fence would be in situ before the dwellings were occupied, and so future residents would be aware of it before choosing to occupy the properties.
9. At the Hearing, the Council expressed concern about the visual impact of the fence along Low Lane. However, the fence would be set back from the road, and would only be visible through gaps between the houses and at the rear of the open space. It would not be unduly imposing on the street scene in my view, and as set out above, its design could be controlled by condition.
10. The submitted Noise Assessment demonstrates that noise within the rear gardens of the proposed dwellings could be reduced to acceptable levels by the proposed acoustic barrier. Other measures would also restrict noise within the properties themselves. From the evidence before me, I am satisfied that future occupiers would not be subject to unacceptable noise and disturbance.
11. For the above reasons, I conclude that the development would not result in unacceptable living conditions for future occupiers of the development with regard to outlook and natural light. It would therefore accord with Policy SG17 of the South Holland Local Plan (2006), which seeks to prevent development that would materially harm residential amenity. It would also accord with the

Framework, which seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

Planning obligation

12. A signed and dated planning agreement has been submitted that relates to onsite affordable housing provision, and financial contributions towards offsite education and open space provision. With regard to affordable housing, this is clearly necessary in order to meet local need and to comply with Policy HS8 of the South Holland Local Plan. With regard to the financial contribution towards education provision, there is detailed evidence before me that this sum directly relates to the impact of the development on local school provision. Moreover, both local primary and secondary schools will have no permanent surplus places by 2019, and specific projects are identified to remedy this shortfall. The Education Authority also provide assurances that the pooling restrictions set out at CIL Regulation 123 have not been exceeded for these projects. I therefore consider that the education provision is necessary, directly related, and fairly and reasonably related in scale and kind, to the development. This aspect of the planning obligation can therefore be taken into account in reaching my conclusions.
13. The proposed contribution to open space is provided on the basis that the development would deliver less than the 14% of the gross site area required by Policy HS11 of the South Holland Local Plan. The sum has been calculated using a standard methodology that has been adopted by the Council. However, it is not clear what open space project this sum is intended to be spent on, and the Council was unable to provide clarity on this matter at the Hearing. It is therefore not clear that this contribution would be spent on a project that would directly relate to the appeal development. Importantly, it is also unclear whether the pooling restrictions set out in the CIL Regulations would be complied with. Accordingly, it has not been demonstrated that the open space contribution is necessary and I cannot attach any weight to this part of the planning obligation.
14. In the absence of a CIL Regulations compliant open space contribution, the development would not comply with the requirements of Policy HS11. I deal with this further in the overall balance, below.

Highway considerations

15. Low Lane is currently a narrow access road with no pedestrian footway or street lighting. However, the development proposes significant improvements to Low Lane, including road widening and the provision of a pedestrian footway. A scheme of improvements to Low Lane could be secured by condition. This would ensure that the development was served by a safe and suitable access, and would also provide significant benefits to existing properties along, and users of, Low Lane.
16. There is adequate visibility at the junction between Low Lane and Battlefields Lane South in my view. In this regard, the former hedgerow that previously served to inhibit visibility to the south has now been removed. I further note that the Highway Authority has not objected to the development on these grounds.

Flood risk

17. The appeal site is located within Flood Zones 2 and 3 as defined by the Environment Agency Flood Map for Planning (Rivers and Seas). This risk relates to tidal flooding. The Framework seeks to steer new development to areas with the lowest probability of flooding by applying a Sequential Test. This states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. However, a very large proportion of South Holland is within Flood Zone 3, including most of Spalding and Holbeach, and it is common ground that the Sequential Test is met in this case.
18. The development is also required to pass the Exception Test as it proposes a 'more vulnerable' residential use in Flood Zone 3. In order to pass the Exception Test, the Framework states, firstly, that *"it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared"*. In this case, the development would provide 39 dwellings towards the Council's deficient 5 year supply position, in an accessible location. As set out above, it would also deliver significant highway benefits to the local area, and would provide new public open space. The proposed acoustic fence would also provide a benefit for existing as well as future residents, from noise from the road. Moreover, the site and the surrounding area are protected by significant flood defences. These include The Wash tidal defences to the Holbeach Marsh frontage with embankment levels of a minimum of 7.00 metres above ordnance datum (AOD). This provides a 1 in 200 year return period level of protection. In addition, there is a second line of defences with embankment levels of 6.00 metres AOD should the first line be overtopped or breached, as well as a number of inland pumping stations. The Wash Shoreline Management Plan 2 states that it is intended to sustain existing flood defences around The Wash. This will include *"an increase of management as needed to sustain the current level of flood risk in the face of climate change"*. These considerable defences, which are not reflected in the Environment Agency Flood Map, significantly reduce the actual risk to the site. The Council's Strategic Flood Risk Assessment maps identify the site to be at low risk of flooding when these defences are taken into account. In these circumstances, I consider that the wider sustainability benefits that would be provided would outweigh the flood risk, which in this case is significantly reduced by the presence of defences.
19. The second part of the Exception Test requires that *"a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere"*. In this regard, the appellant has submitted a site Flood Risk Assessment (FRA) to show that the development would be safe without increasing flood risk elsewhere, which has not been contested by the Council. The development would therefore pass both parts of the Exception Test.

Other considerations

20. The development would not provide a policy compliant level of affordable housing. However, viability evidence has been submitted to the Council, and reviewed by the District Valuer, to justify this. The Council accepts that a policy compliant contribution is not viable in this case, and I see no reason to

take a different view. In this regard, the development would accord with Policy HS8 of the South Holland Local Plan (2006), which allows for a lower level of affordable provision where the viability of the scheme is impaired.

21. A drainage strategy has been submitted by the appellant that details a number of potential options to drain the site. From the evidence before me, I am satisfied that this matter is capable of being dealt with by condition.
22. At the Hearing, my attention was drawn to a previous appeal decision for a single dwelling at No 45 Low Lane (ref APP/A2525/A/05/1184411). That appeal was dismissed on the grounds that the development would erode the value of the open land to the north of Low Lane. However, that Decision was made in a very different national planning policy context, when there was no requirement to demonstrate a 5 year supply of housing sites. Moreover, that development proposed only a single dwelling, compared to the much larger scheme currently before me which delivers significantly more benefits. Accordingly, I have come to my own view on the appeal development.
23. A number of recently approved housing developments in Holbeach were discussed at the Hearing. However, the Council confirmed that many of these sites are already accounted for in its 5 year supply calculations. In any case, there is no evidence before me that Holbeach is incapable of accommodating an additional development of this size, or that its infrastructure is at capacity.

Conditions

24. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty.
25. I have imposed a condition that requires the submission and approval of existing and proposed site levels and proposed floor levels of the dwellings and hard surfaced areas. This is necessary to protect the living conditions of neighbouring occupiers and to ensure a satisfactory visual relationship with the street. A further condition requiring the submission and approval of a surface water drainage scheme is necessary to ensure the development is not at risk of flooding and does not increase the risk of flooding elsewhere. I have also imposed a condition requiring the submission and approval of a construction management plan, in the interests of highway safety and the living conditions of neighbouring occupiers. These conditions are pre-commencement in nature as they affect all aspects of the construction process.
26. Conditions requiring the submission and approval of the external materials, landscaping details, and the design of gas and electricity boxes and flues / vents are necessary in order to preserve the character and appearance of the area. Further conditions requiring the submission and approval of details relating to the proposed open spaces and future management and maintenance arrangements are necessary to ensure that the open spaces are made available for use, and that the site is appropriately managed and maintained. A condition requiring details for the widening and strengthening of Low Lane to be submitted and approved is necessary in the interests of highway safety. An additional condition requiring that the development incorporate the recommendations set out in the site Flood Risk Assessment is necessary to ensure the development is not at risk of flooding. Further conditions relating to

the proposed boundary treatments and noise mitigation measures are necessary to protect the living conditions of future occupiers, and the character and appearance of the area.

27. The Council suggested a further condition that would have required the submission and approval of a scheme to deal with any contamination of land or pollution of controlled waters. However, there is no justification or evidence before me that such a condition is necessary. In this regard I note that the site is currently undeveloped agricultural land.

Overall Balance and Conclusion

28. The appeal site is designated as open countryside under Policy HS7 of the South Holland Local Plan (2006). This policy seeks to restrict new housing development in the open countryside unless it is essential to meet the needs of agricultural, forestry or other workers, or it comprises a small scale affordable housing development. The development would meet neither of these exceptions and would therefore be contrary to Policy HS7. However, it is common ground that the Council is only able to demonstrate a 3.3 year supply of housing land, which is a significant shortfall against the 5 year requirement. Whilst the Council state that the emerging joint South East Lincolnshire Local Plan will restore its 5 year supply position, that document is currently being examined. The examining Inspector has not yet endorsed either the proposed housing requirement or the supply of sites identified to meet it. This document may not be adopted for some time and I therefore attach only limited weight to it at this stage. In addition, the appeal site is physically separated from other areas of open countryside by the A17 road and Battlefields Lane South, and is highly contained in this regard. In these circumstances, I attach only limited weight to the conflict with Policy HS7.
29. The development would make a significant contribution towards the Council's deficient 5 year supply position, and would provide 6 additional affordable dwellings. It would also be in an accessible location in walking distance of local services and facilities, and would deliver significant improvements to Low Lane. Furthermore, there would be economic benefits including the creation of employment, and the purchasing of materials and furnishings. Moreover, I have found that the development would not result in unacceptable living conditions for future occupiers, and that the development would pass the Sequential and Exception Tests. The planning obligation would provide for additional education facilities required as a result of the proposed development.
30. Set against this, in the absence of a CIL Regulations compliant open space contribution, the level of open space provision would not comply with Policy HS11. However, open space would still be provided onsite that would benefit both new and existing residents. In this case, the adverse impacts would not significantly and demonstrably outweigh the benefits of the development. It would therefore comprise sustainable development as set out in the Framework.
31. For the reasons given above I conclude that the appeal should be allowed.

Thomas Hatfield

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: 20.LP.01, 206.SL.01K, 206.K2S2B01-B.P.01, 206.K2S3B01-B.P.01, 206.K2S3B03-R.P.01, 206.Aff-1B2P-01R.P.01, 206Aff-2B4P-01.P.01 and 206.DSG.P.01.
- 3) No development shall take place until full details of the existing and proposed site levels and proposed floor levels of the dwellings and hard surfaced areas, above ordinance datum, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 4) 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:
 - i) 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;
 - ii) provide attenuation details and discharge rates which, unless otherwise agreed with the receiving body, shall be restricted to 1.4 litres per second per hectare;
 - iii) 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 in accordance with the approved details.
- 5) 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:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) measures to control the emission of dust and dirt during construction;
 - v) delivery, demolition and construction working hours.

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

- 6) No development shall take place above slab level until a schedule of materials to be used in the construction of the external surfaces of the buildings and hard surfaced areas of the development hereby permitted has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place above slab level until details of a scheme of landscaping and tree planting is submitted to and approved in writing by the Local Planning Authority. The details shall include the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance. All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the first occupation of the development 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.
- 8) No development shall take place above slab level until a plan illustrating all areas of publicly accessible open space has been submitted to and approved in writing by the Local Planning Authority. The areas so approved shall be laid out and made available for use in accordance with a specification and phasing that shall first be submitted to and approved in writing by the Local Planning Authority.
- 9) No development shall take place above slab level until a scheme for the widening and strengthening of Low Lane, and for the provision of a 1.8 metre wide frontage footway together with associated kerbing and drainage, are submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the development.
- 10) The development hereby permitted shall be carried out in accordance with the recommendations set out in the site Flood Risk Assessment (Geoff Beel Consultancy, dated November 2014). In addition:
 - i) no development shall take place above slab level until a scheme of flood resilient and resistant measures, including phasing arrangements / timings, has been submitted to and approved in writing by the local planning authority. These measures shall be implemented in accordance with the approved phasing arrangements / timings.
 - ii) finished floor levels of all dwellings shall be set no lower than 3.50 metres above ordnance datum;
- 11) Prior to the first occupation of the development, a management plan for the areas of publicly accessible open space, any outdoor play areas, and the acoustic fence, 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 in accordance with the approved details.

- 12) Prior to the first occupation of the development, details of the proposed boundary treatments including the acoustic fence, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a schedule of materials, and details of the size and species of any hedging. The approved details shall be implemented in full prior to the first occupation of the development.
- 13) Prior to first occupation of the development, the mitigation measure set out in the approved Environment Noise Assessment (Acoustic Associates, dated December 2014) shall be completed and operational.
- 14) Details of the design and position of all external boxes for gas and electricity supplies and of any gas flues and soil vent pipes shall be submitted to and approved in writing by the Local Planning authority prior to their installation. Development shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Tim Waller	of Waller Planning
Shruti Trivedi	of Roythornes Ltd
Natasha Bicknell	of Roythornes Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mark Simmonds	South Holland District Council
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INTERESTED PERSONS:

Cllr Francis Biggadike	Holbeach Town Ward
Cllr Paul Foyster	Holbeach Town Ward
Cllr Martin Howard	Holbeach Parish Council
Roy Kent	local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Indicative illustrations of the proposed acoustic fence
- 2 Appeal Decision APP/A2525/A/05/1184411 relating to 45 Low Lane, Holbeach
- 3 Decision Notice for application H09/0253/05 relating to 45 Low Lane, Holbeach
- 4 Officer Report for application H09/0253/05 relating to 45 Low Lane, Holbeach
- 5 Holbeach Parish Council response to application H09/0253/05
- 6 Article from Spalding Today, dated 3 October 2017, titled "Overtaking lane briefing session with Councillors"

Costs Decision

Hearing Held on 24 October 2017

Site visit made on 24 October 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 23rd November 2017

Costs application in relation to Appeal Ref: APP/A2525/W/17/3177564 Low Lane, Holbeach, Lincolnshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Benchmark Properties for a full award of costs against South Holland District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a residential development of 39 dwellings.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance ("PPG") advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant submits that the Council has behaved unreasonably in refusing planning permission on a planning ground capable of being dealt with by conditions. Moreover, the decision to refuse permission was against Officer advice, and the appellant contends that Planning Committee should have considered a deferral in order to allow more time for this matter to be addressed.
4. In determining the appeal, I came to a different view from the Council. However, assessing the acceptability of the living conditions of future occupiers of a development is to a certain extent a matter of planning judgment. It was not unreasonable for the Council's Planning Committee to come to a different view from Officers in this regard. In addition, the Council has provided a detailed justification in support of its reason for refusal. The Council was also under no obligation to consider a deferral if it did not consider that its concerns could be satisfactorily addressed by conditions.
5. Whilst the appellant submitted a number of illustrations on the day of the hearing, these were not available prior to this. Nor is it clear that these drawings would have overcome the Council's reason for refusal. In this regard, I note that the Council objected to the impact of the acoustic fence on the street scene, once it had reviewed the submitted illustrations. Whilst I came to

a different view and allowed the appeal, again, this is to a certain extent a matter of planning judgment.

6. Accordingly, and based on the evidence before me, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Thomas Hatfield

INSPECTOR