The Planning Inspectorate

Appeal Decision

Site visit made on 31 May 2018

by D Guiver LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5 September 2018

Appeal Ref: APP/A2525/W/18/3196554
Land Adjacent 44 Bridge Road, Long Sutton, Spalding PE12 9EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr W Delahoy against the decision of South Holland District Council.
- The application Ref H11-0399-17, dated 18 April 2017, was refused by notice dated 22 September 2017.
- The development is described as a proposed residential development.

Decision

1. The appeal is allowed and planning permission is granted for a proposed residential development at Land Adjacent 44 Bridge Road, Long Sutton, Spalding PE12 9EF in accordance with the terms of the application, Ref H11-0399-17, dated 18 April 2017, subject to the conditions in the attached Schedule.

Procedural Matters

2. The application is made in outline with all matters save access reserved for future consideration. Indicative drawings showing site layout were submitted with the application and I have had regard to these in determining this appeal.

3. I have been referred in evidence to the emerging South East Lincolnshire Local Plan (the Emerging Plan), which has been submitted for examination in public. At this stage I cannot be certain that the Emerging Plan will be adopted in its current form and I therefore give its Policies limited weight.

4. Since the date of the Council's decision, the National Planning Policy Framework 2018 (the Framework) has been published and has effect. Local development plan policies that pre-date the publication should be given due weight according to the degree of consistency with the Framework. The parties were invited to comment on the impact of the Framework on the proposal and all comments have been taken into consideration in determining this appeal.

Main Issues

5. The main issues are the effect of the proposed development on:

   a) the living conditions of future occupiers of the proposed development with particular reference to noise and disturbance; and

   b) the availability of land for employment use.

Reasons

Living Conditions of Future Occupiers

6. The appeal site comprises a roughly rectangular plot of land connected to Bridge Road by an asphalt access leading to a hard-core track. The track runs between a pair of semi-detached bungalows located to the front of the site and Bridge Road Industrial Estate to one side. On the other side of the appeal site is a yard used by recovery vehicles, with further buildings in commercial use beyond that, and to the rear lies open land some of which at least is in agricultural use. In the surrounding area there are a number of dwellings and industrial units and the locality has a mixed residential and commercial character. The site is outside but adjacent to the settlement limit for Long Sutton but the locality is nevertheless relatively well developed. The proposal is for the erection of nine detached and semi-detached dwellings.

7. An acoustic assessment was undertaken in accordance with BS4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound. The assessment concluded that the likely impact on the site of noise from neighbouring commercial and industrial uses would be low. While the assessment recognised the difficulties in determining a specific sound level with any degree of certainty there is no compelling evidence before me that the proposal would result in unacceptable levels of noise for future occupiers. The most sensitive times for disturbance from noise would be at weekends and in the evening/night. There is no evidence before me that the neighbouring commercial units operate in the late evenings or at night, or that any weekend operations have cause specific noise problems for the existing occupiers of the bungalows to the front of the site. There is a sufficient separation between the site and the industrial uses for any noise to fall to within acceptable limits and boundary treatments could be used to further reduce any impact to a minimum.

8. Therefore, the proposal would accord with Saved Policy SG1 of the South Holland Local Plan 2006 (the Local Plan), which seeks to ensure that the quality of life for residents is unimpaired or enhanced.

Employment Use of Land

9. In its decision notice the Council gave the loss of employment land as a reason for refusal and relied on Saved Policy EC3 of the Local Plan, which seeks to ensure that a change from employment to non-employment use only occurs where the existing use is unsatisfactory or where the benefit of the proposed use outweighs the need to retain the existing use. However, the site is outside the current settlement boundary for Long Sutton and is not part of any allocated area for industrial or commercial development. While the site did benefit from outline planning permission for light industrial use dating from 2014, this has lapsed. Accordingly, Saved Policy EC3 of the Local Plan is not directly relevant to the proposed development

10. The Council also referred to Policy 8 of the Emerging Plan, which proposes extending the settlement boundary to include the appeal site, and to designate it for employment use. However, the Emerging Plan is not in force. Accordingly, while the proposal would entail a change of use of the land, this would be from an undesignated use outside the settlement boundary to residential use and not from land in employment use.

Other Matters

11. The site is located within Flood Zone 3 and the South Holland Strategic Flood Risk Assessment identifies the location as 'Danger to Some'. The Council confirms that there are insufficient reasonably available alternative sites appropriate for the proposed development located in areas with a lower risk of flooding and therefore the site meets the sequential test. The Council accepts that the proposal would deliver benefits to the community that outweigh flood risk and subject to satisfactory mitigation measures, both elements of the exceptions test are satisfied. There is nothing in the evidence before that would lead me to any different conclusion.

12. The Parish Council raised a concern about motorists speeding on the portion of Bridge Road adjacent to the site. The site is close to the 30mph speed limit entering Long Sutton and there are clear views in both directions from the site entrance that would allow for safe entry and exit. I note that the highway authority did not raise any object on highway safety grounds.

Planning Balance

13. In its evidence the Council sought to raise an additional ground of objection to the proposed development, namely the location of the site outside the Long Sutton settlement boundary. Saved Policy H7 of the Local Plan seeks to ensure that in such areas housing development is limited to that those schemes essential to meet the needs of rural workers, or the where proposal is for small scale, rural exception affordable housing. Neither of these exceptions applies and therefore the proposal would be contrary to Saved Policy H7. However, it is common ground between the parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites (SDHS), although the precise availability is not specified.

14. Footnote 7 of the Framework provides that where a Council cannot demonstrate a five-year SDHS, policies governing the provision of housing developments, which would include Saved Policy H7, should be considered out of date. Paragraph 11 of the Framework provides that where the policies most important for determining an application are out of date, planning 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. There are no specific policies in the Framework protecting the appeal site or any assets of particular importance from development.

15. For the reasons given above there are no adverse impacts from the proposal that would significantly and demonstrably outweigh the benefits. Accordingly the proposal benefits from the presumption in favour of sustainable development.

Conditions

16. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with the advice in the Planning Practice Guidance. The application form and indicative site layout identified nine dwellings to be developed and I have added a planning condition to reflect this number.

17. In the interests of proper planning I have imposed the standard conditions in respect of time limits. For certainty I have imposed a condition requiring compliance with the plans.

18. To mitigate flood risk I have imposed conditions requiring the development to be carried out in accordance with the Flood Risk Assessment and Sustainable Drainage Strategy, including relevant mitigation measures. To ensure highway safety I have imposed conditions relating to the standards of the estate road, including the junction with Bridge Road, and the footpaths and private drive on the site. Although landscaping is a reserved matter, I have imposed a condition requiring the erection of a boundary fence to mitigate noise levels in the interests of protecting the living conditions of future occupiers of the site. For similar reason I have also imposed conditions relating to works for the disposal of sewage and the storage and disposal of refuse.

19. Although the site appears to be previously undeveloped, there are industrial uses in the vicinity. The effect of any contamination on the progress of the development can be adequately controlled by condition and I have therefore imposed one.

20. I have not imposed a condition limiting the number of dwellings because this is specified in the formal decision. I have not imposed a limit on the maximum floor space for the approved dwellings as this was suggested to ensure the development remained below the spatial limit that would require a contribution towards affordable housing. Paragraph 63 of the Framework advises that contributions for affordable housing should not be sought from developments that are not major developments. Major developments are defined in the Glossary to the Framework as generally being for ten or more housing units or where the site has an area of 0.5hectares or greater. As neither of these stipulations applies, the reason for the proposed condition is no longer applicable and the therefore the condition is neither necessary nor reasonable in all the circumstances.

Conclusion

21. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should succeed.

D Guiver

INSPECTOR

Schedule

1) The development hereby permitted shall comprise no more than nine dwellings.

2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

4) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

5) The development hereby permitted shall be carried out in accordance with the following approved plans: 6083-1; and SE-728-02, but only in respect of those matters not reserved for later approval.

6) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment ref. GCB/Swann Edwards dated April 2017; and Sustainable Drainage Strategy ref. 1940-DS dated August 2017.

7) The following mitigation measures shall be implemented in complying with the Flood Risk Assessment ref. GCB/Swann Edwards dated April 2017:
   i) all dwellings shall rise to two-storeys in height;
   ii) finished floor levels shall be set at least 500mm above existing ground level; and
   iii) flood resilient construction shall be incorporated within the development up to 300mm above finished floor level.

8) No development shall take place until details of the standards to which the estate road, footpaths and private drive serving the development are to be constructed have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the road, footpaths and drive have been constructed in accordance with the approved details.

9) Details of the standards to which the estate road and private drive serving the development are to be constructed shall:
   i) incorporate a six-metre radii tangential to the nearside edge of the carriageway of Bridge Road and the minimum width of the access shall be 5.5 metres; and
   ii) include provision for vehicles to turn so that they may enter and leave the site in forward gear,

   and these provisions shall thereafter be kept available at all times for those purposes.

10) Details of landscaping shall include provision for a two-metre high close-boarded fence to be erected on the site boundary and for that provision to be maintained thereafter.

11) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.

12) None of the dwellings hereby permitted shall be occupied until provision for the storage and disposal of refuse has been provided on the site in accordance with details that have first been submitted to and approved in writing by the local planning authority and this provision shall thereafter be kept available at all times for that purpose.

13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.