



Appeal Decision

Site visit made on 31 October 2022

by C Harding BA(Hons) PGDipTRP PGCert MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2023

Appeal Ref: APP/A2525/W/22/3298498

Land at Former Halmer Grange, Grange Drive, Spalding, PE11 2DX

- 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 Market Homes Ltd against the decision of South Holland District Council.
 - The application Ref H16-0061-22, dated 24 January 2022, was refused by notice dated 8 March 2022.
 - The development proposed is 2no. new dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for 2no. new dwellings at Land at Former Halmer Grange, Spalding PE11 2DX in accordance with the terms of the application, Ref H16-0061-22, dated 24 January 2022, and the plans submitted with it, subject to the conditions set out in the schedule at the end of this decision.

Main Issues

2. The main issues are as follows:
 - Whether the proposed development would provide acceptable arrangements for the collection of domestic refuse, and;
 - The effect of the proposed development upon the living conditions of occupiers of nearby residences, with regard to noise and disturbance, and;
 - Whether or not the proposed development is acceptable in respect of flood risk having regard to national and local policies and guidance.

Reasons

Collection of refuse

3. The appeal site is located within the grounds of an existing apartment building. The existing building is large, detached and occupies a backland site beyond dwellings fronting Grange Drive. The sole access point to the existing building is by means of a private access from Grange Rise, which runs between two existing properties. An external bin store associated with the existing flats is located within the site, close to the private access. The proposed dwellings would be located such that access would only be possible by means of a private shared access.
4. In relation to this the Council have advised that such an access arrangement would mean that refuse, if collected by the Council, would be required to be

deposited at a kerb side location on Grange Drive, which the Council estimate would require occupiers of these dwellings to transport waste beyond the 30m maximum carrying distance which is set out in its "Private Drives – Waste Vehicle Collection Service Guidance Note". The appellant has not disputed that the carrying distance would exceed the recommended maximum distance.

5. The evidence indicates that whilst the Council's Waste Collection Service Guidance Note has been adopted by the Council, it does not form part of the Development Plan. Additionally, it is unclear whether it has been subject to any degree of consultation. Whilst it remains a material consideration, it is a document to which I can afford only very limited weight.
6. There is dispute between the Council and the appellant with regards to whether the existing flats currently have waste collected by the Council's Refuse Team. However, regardless of whether waste from the existing flats is collected by the Council or by other means, this is of limited relevance to the proposed development.
7. The submitted plans indicate that refuse storage would be available at each individual property, requiring transportation of waste only in advance of the day of collection. Whilst the distance to deposit refuse at the kerbside would be more than 30m, it would not be excessive. Future occupiers of the dwellings would be aware of the distance to the kerbside, and could use various means to transport the waste. I consider that the proposal would not be unacceptable in this regard.
8. I therefore conclude that the proposal would provide acceptable arrangements for the collection of domestic refuse. The Council has made reference to Policy 3 of the South East Lincolnshire Local Plan (SELLP), however this is a design policy and in reference to refuse, only requires that provision be made for storage within the site, which would be achieved in this instance.
9. The Council also refers to Paragraph 134 of the National Planning Policy Framework ('the Framework') which advises that where development is not well designed, and especially where it fails to reflect local and national design guidance, that it should be refused. However, in this instance, there is no conflict with local design policies or the national design code with respect to waste management, and as a result the proposal would accord with this paragraph of the Framework.
10. Although the National Design Code states that well designed places will consider local waste storage, management and pick-up, it does not provide any advice as to what may constitute an acceptable arrangement in any given situation. Reference is also made to conflict with the National Model Design Code. This document provides guidance with regards to developing design codes, and whilst the advice within it includes sound design principles, it is of only limited relevance to the assessment of development proposals. Accordingly, the proposal does not conflict with these codes.

Living Conditions

11. The potential effect of the level of movements and activity associated with the existing flats was considered by a previous Inspector, in allowing the appeal for that development¹, who concluded that it would not result in material harm.

¹ APP/A2525/W/15/3011299

12. Following this, in a further appeal² at the site, in relation to six further dwellings, the Inspector in that instance acknowledged that the activity and movements related to six dwellings would not be significant in their own right, but went on to conclude that the cumulative impact, when considered in the context of the 17 flats, would be significant. However, the currently proposed development would be materially different to those previously considered by other Inspectors.
13. The proposal now before me would introduce two dwellings onto the site, and whilst it would increase the level of activity and movements making use of the existing drive, the number of additional vehicle movements and general level of activity would be modest. There is no evidence before me to indicate that the occupation of the existing flats has given rise to specific issues in relation to noise and disturbance from activity and movements.
14. The Council are also concerned with regards to the type of noise likely to be generated by two dwellings, in part due to the inclusion of private gardens, and that this would differ in character from activity associated with the existing flats on the site. It is to be expected that any occupiers of the proposed properties would seek to make use of the gardens provided. This would introduce the potential for additional noise to generated, which could be of a different character than might be expected in association with occupation of the existing flats.
15. However, the local area is residential in nature, being generally characterised by residential dwellings and associated gardens where a level of external domestic noise is to be reasonably expected. Furthermore, the appeal site is located in close proximity to school playing fields, that when in use are also likely to be a source of noise. Having regards to these factors, I conclude that the level and nature of activity generated by two further dwellings would not lead to unacceptable living conditions for occupiers of nearby existing properties.
16. In reaching this conclusion I have had regard to the findings of the previous Inspector, however there is a clear and material difference in scale between the proposal for 6 dwellings that was subject to that appeal, and the proposed development before me now.
17. With regards to this main issue, I conclude that the proposed development would not have an unacceptable effect upon the living conditions of occupiers of nearby residences, with regard to noise and disturbance. It would therefore be in accordance with SELLP Policies 2 and 3, which together and amongst other criteria, require development proposals to consider impact upon neighbouring land uses in relation to noise and disturbance, and be appropriate to the local area.

Flood Risk

18. It is accepted by both parties that the site is located within Flood Zone 3a, that the South East Lincolnshire Flood Risk Assessment concludes that the vast majority of South Holland District lies in Flood Zones 2 and 3, and that as a result that it would not be realistically possible to direct all developments to zones with a lower level of flood risk. Consequently, it is not disputed that the

² APP/A2525/W/16/3166889

proposed development would meet the sequential test set out at Paragraph 162 of the Framework.

19. However, as it is not possible to locate the proposed development in areas with a lower risk of flooding, then the exception test as set out in SELLP Policy 4 and at Paragraph 163 of the Framework is relevant. SELLP Policy 4 states that development in an area at risk of flooding, such as that proposed as part of this appeal, will only be permitted where, it can be demonstrated that it would provide wider sustainability benefits to the community that outweigh flood risk, and that new development will be safe and will not increase flood risk elsewhere.
20. It is identified within the evidence that the probability of the site flooding from the Environment Agency (EA) managed regime is less than 1 in 100, although the risk will increase over time due to climate change. The submitted flood risk assessment concludes that the overall risk of flooding, taking into account all factors and proposed mitigation, would be low and nor would the proposed development increase flood risk elsewhere. This is not disputed by the Council or the EA.
21. The proposed dwellings would provide a modest boost to the supply of housing, a benefit to which I afford moderate weight. It would also result in short-term temporary economic benefits during construction, and longer-term economic benefits through support to businesses and services in Spalding and the wider area. However, the scale of the development means that I afford these benefits only limited weight. In addition, the appeal site is located within a large settlement, and that as a result, would be located with access to a range of services and facilities, and accessible by a range of sustainable modes of transport, and it would represent the reuse of previously developed land. I also afford these benefits moderate weight.
22. I therefore conclude that the proposed development would be acceptable with regards to flood risk, and that the exception test would be passed. The proposed development would therefore be in accordance with SELLP4 and Section 14 of the Framework which together seek to steer new development away from areas at the highest risk of flooding and ensure that vulnerable development is adequately protected.

Other Matters

23. Although raised within representations, the Council has not raised objection to the proposed development with regards to parking and access arrangements or foul drainage. I have not been presented with any substantive evidence that would lead me to reach a different conclusion on these matters. In addition, any disturbance during construction would be temporary and could be adequately managed by means of a planning condition. Any dispute with regards to the site boundaries would be a civil matter between the relevant parties.

Conditions

24. The Council have provided a list of suggested conditions. Where necessary, I have amended the conditions in order to ensure that they meet the relevant tests as set out at Paragraph 56 of the Framework. Conditions relating to the period of commencement, approved plans and details of finished floor levels

are attached in the interests of clarity. Details of finished floor levels are required prior to the commencement of the development in order to ensure that groundworks are undertaken appropriately.

25. A condition relating to the submission of a construction management plan is required in order to ensure that the living conditions of occupiers of nearby properties are protected during construction, and to ensure the appropriate management of construction traffic. This is required to be pre-commencement in order to ensure that adequate measures are in place before development starts.
26. Details of external materials and details of landscaping and its implementation and boundary treatments are required in order to achieve a satisfactory form of development. Nest boxes are required in the interests of delivering biodiversity net gain.
27. I have also attached a condition requiring the submission and agreement of a means of storing and disposal of waste in order to ensure that appropriate arrangements are made in the interests of the living conditions of nearby occupiers.
28. I have not attached the Council's suggested condition with regard to water consumption as I consider that it would be imprecise and unenforceable, and would therefore fail the relevant tests. Nor I have attached the suggested conditions relating to external utilities infrastructure or refuse arrangements as these conditions are not necessary in order to make the development acceptable.

Conclusion

29. The proposed development would be in accordance with the development plan as a whole, and there are no material considerations that would lead me to reach a conclusion other than in accordance with it.
30. For the reasons given above, I conclude that the appeal should be allowed, subject to conditions.

C Harding

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:
SE-1686 100
SE-1686 PP2000
SE-1686 PP2100
SE-1686 PP2101
- 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in

relation to existing ground levels 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, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials;
 - the erection and maintenance of security hoarding;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction;
 - a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - delivery, demolition and construction working hours.

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

- 5) Prior to any development above ground level a scheme of landscaping shall have been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings 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.
- 7) Prior to installation, details of any proposed boundary treatment, including a schedule of fencing levels, heights and materials, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved boundary treatments will be implemented prior to the occupation of the development and retained thereafter.
- 8) Prior to any development above ground level, details of the materials to be used in the construction of the external surfaces of the development hereby permitted shall have been submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved details.
- 9) Prior to the occupation of any dwelling hereby approved, three swift nesting boxes shall be incorporated within the external walls of each dwelling and retained thereafter.
- 10) The development hereby approved shall only be carried out in accordance with the essential mitigation measures set out in the document "Flood

Risk Assessment – Ellingham Consulting Ltd, Jan 2022”, including, but not limited to habitable floors being a minimum of 2m above ground level, and flood resilient construction being utilised up to 0.3m above first floor level.

*****End of Conditions*****