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# Appeal Decision

Site visit made on 24 August 2016

**by Paul Singleton BSc (Hons) MA MRTPI**

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

**Decision date: 21 September 2016**

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**Appeal Ref: APP/Z2205/W/16/3150078**

**Land off Wainfleet Road, Boston, Lincolnshire PE21 9RN**

- 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 Larkfleet Homes against the decision of Boston Borough Council.
  - The application Ref B/14/0329, dated 29 August 2014, was refused by notice dated 11 November 2015.
  - The development proposed is the construction of 76 new residential dwellings, associated garages and infrastructure.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The application initially sought permission for 82 dwellings on the site but was revised to propose a lower number before it was determined by the Council.
3. A further revision (P7) of the drawing number NTW/2223/100-01, showing the Proposed Ghost Island Access, was submitted with the appeal. The Council has not objected to that plan having been submitted and I am satisfied it serves only to indicate the detailed dimensions of what had previously been proposed rather than to amend the proposals in any way. Hence, I do not consider that the interests of any party would be prejudiced by my taking that clarification of the proposals into account in my consideration of the appeal proposal.
4. The Council is unable to demonstrate a 5 year forward housing land supply (HLS) as required by paragraph 49 of the National Planning Policy Framework (Framework) and the relevant development plan policies for the supply of housing should, therefore, be considered to be out of date. The fourth bullet of paragraph 14 of the Framework states that, in these circumstances, planning permission should be granted unless any adverse impacts of doing so would clearly and demonstrably outweigh the benefits when assessed against the Framework's policies taken as a whole or specific policies in the Framework indicate that development should be restricted.

## Main Issues

5. The main issue arising from the reason for refusal is the effect on the safety of highway users, drivers and pedestrians. However, in light of the representations from Historic England (formerly English Heritage), the Council's
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consultant conservation architect and other representations received and having regard to the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act), the effect of the proposal on the setting and significance of the listed heritage assets comprised in Burton Hall and its former stables should also be treated as a main issue. I note that, whilst the appellant submitted a draft Statement of Common Ground indicating that the effect on the setting of Burton Hall and the former stables would be acceptable, that was never signed by the Council.

## **Reasons**

### *Highway safety*

6. Central to the dispute between the parties is whether the visibility splays at the proposed site access should be assessed against the highway design standards and requirements set out in the Department of Transport's Design Manual for Roads and Bridges (DMRB) or those within Manual for Streets and Manual for Streets 2 (MfS and MfS2). The County Council's assertion, that only DMRB standards should be used, rests on its argument that the primary function of the section of Sibsey Road (A16) from which vehicular access is proposed is to act as a transport corridor (i.e. as a road) and not to accommodate the movement of pedestrians and other non motorised users (i.e. a street).
7. The existence of three points of access/egress from Sibsey Road to the Pilgrim Hospital opposite the appeal site, which is both a major community facility and a major local employer, does on its own suggest a more varied role for this particular section of the road. That more varied role is confirmed by the direct frontage accesses to a large number of dwellings on the east side of the road which extend for some distance beyond its junction with Castle Road. MfS2 states that the strict application of DMRB to non trunk routes is rarely appropriate in built up areas, regardless of traffic volume (Status and Application) and that, even where DMRB is used, designers should bear in mind the key principles of MfS and apply DMRB in a way that respects local context (paragraph 1.3.3).
8. Having regard to that guidance I consider that it would not be appropriate to determine which guidance is to be preferred without taking account of the local context and, in particular, the use and character of the particular section of road from which access is proposed. Such an approach would seem to disregard both the main purposes of MfS2, which are to fill the gap between DMRB and MfS guidance and to explore how and where MfS principles could be applied to busier streets and non-trunk roads, and the statements within it that MfS2 should be the starting point for any scheme affecting a non-trunk road and that its guidance has been developed for roads with traffic speeds of 40mph or less.
9. The section of Sibsey Road from which the site access is proposed is of single carriageway form with footways and parking restrictions on both sides, is lit to an urban standard, and is subject to 40 mph speed limit. Although the site lies just outside of the development limits for Boston, the road itself is within that boundary and the proposed access is in relatively close proximity to the mini roundabout junction of Sibsey Road, Wainfleet Road and Spilsby Road. The main hospital building is prominent in view when approaching from the north and, together with the continuous line of boundary walls/hedges and driveways to the residential properties on the eastern side of the road, provides a clear

- signal to drivers that they are entering the urban area. The start of the 40 mph speed limit and of the double yellow lines reinforces that message.
10. When travelling north from the town centre the hospital buildings are not immediately visible but, due to the extent of its site frontage, the width of the site access and egress, and the existing ghost island, most drivers are likely to be aware of the presence of a major hospital facility and to adjust their driving behaviour accordingly. Drivers of vehicles exiting from the roundabout to travel north have good forward visibility to and beyond the hospital access and I observed on my site visit that drivers tend to stay at a relatively low speed if they can see any build up of traffic around the hospital access. The character of the road corridor is such that there is no sense of having left the built up area until one has passed the Castle Road junction and reached the open fields on the west side of Sibsey Road. The speed surveys, which show that average speeds of northbound traffic are below the 40 mph limit, at between 32 and 38 mph both to the north and south of the proposed site access, support these observations.
  11. For these reasons I consider that, whilst it does serve as a through route, the overall character of this section of Sibsey Road is more urban than rural. Indeed, the appeal site itself is the only site with a frontage with a more open and rural character but that would be changed if the proposal was to go ahead.
  12. MfS2 makes clear references to right turn lanes, stating that highway authorities should consider carefully all their effects before deciding to use them and that, where they are used, refuges should be provided in ghost islands to facilitate pedestrians crossing (paragraph 9.4.9). These references do not support the County Council's assertions that such junctions do not feature in MfS or MfS2 and that the standards set out in that guidance are only for simple 'T' junctions. Given these references within MfS2, and that Table 7/1 of TD42/95 within the DMRB, which specifies the Y distances for visibility measurement, does not itself distinguish between ghost island and other more standard junctions, I see no reason why MfS and MfS 2 guidance cannot be applied to ghost island right turn lanes as well to other forms of junction.
  13. I have been referred to two appeal decisions (APP/E2530/A/10/2136072 and APP/F1610/A/14/2225029) in which the Inspectors found that MfS and MfS2 could be used to assess the visibility requirements at the proposed junctions, one within Lincolnshire and one elsewhere. Whilst I accept that neither of these cases provides a direct parallel to the current proposal the reasoning set out by both Inspectors supports my conclusion that it is appropriate to have regard to local context in deciding whether or not only DMRB standards need to be used. Accordingly, I find that the design guidance and requirements in MfS and MfS2 do provide an appropriate basis for assessing visibility requirements for the proposed access. However, I note the appellant's contention that the proposed ghost island meets the DMRB requirements in all other respects.
  14. A visibility splay 2.4 metres (m) ('X' distance) and 120m ('Y' distance) can be achieved to the north of the proposed access junction and the parties agree that this would provide ample visibility in that direction. Turning to matter of what minimum Y distance should be required to the south, I accept the appellant's argument that the 32 mph average speed is the more representative of the two 85<sup>th</sup> percentile speeds identified by the speed survey since this was recorded at a point close to the southern end of the proposed

visibility splay. Using that average speed the appropriate Standard Stopping Distance calculation produces a Y distance requirement of 52m. The appellant's plan shows that a Y distance of 58m, when measured at the edge of the carriageway, can be achieved and the MfS minimum standard would therefore be exceeded by a small degree. Although such splays are conventionally measured at the nearside carriageway edge, what a driver emerging from the site access road would need to be able to see is a vehicle approaching in the opposite lane rather than the kerb on the inside edge of the road.

15. MfS2 provides that visibility to the left of the minor road may be measured to the centreline of the main arm where circumstances make it unlikely that vehicles approaching from the left will cross the centreline (paragraph 10.5.5); in my view, such circumstances would be likely to apply in this case. Drivers exiting the mini roundabout are already discouraged from overtaking as they quickly encounter carriageway markings warning them to keep left in advance of the existing ghost island right turn lane serving the hospital access. The proposal would significantly reduce the likelihood of such drivers overtaking on the approach to the site access as the start of the proposed ghost island and pedestrian refuge would be only be a relatively short distance from the existing keep left bollard at the exit from the roundabout; there would, therefore, be very limited opportunity for a driver to attempt an overtaking manoeuvre on this section of the road. The appellant's notes of their meetings with officers indicate that the County Council has previously accepted this likely outcome of the proposed works.
16. I consider that the measurement of the Y distance to the centreline is appropriate in this context and, as shown on drawing no. NTW/223/100-01 revision P6, the 85m distance that can be achieved would meet both the MfS and DMRB standards. In reaching this conclusion I have also had regard to the findings of the study reported in MfS2 that found no evidence to show that a reduction in the Y distance is directly associated with an increased collision risk at high risk urban sites.
17. The Parish Council has suggested that the speed limit along this section of the A16 should be reduced to 30 mph and, if this change were to take place, there would be no question that the MfS standards would apply when determining visibility distances. However, as such a change is only a possibility at this stage, I have not taken it into account in forming my judgement as to the acceptability of the splays which can be achieved.
18. I consider that the County Council's concerns about the forward visibility for vehicles approaching from the south are misplaced given that average speeds recorded in the section of road closest to the roundabout are significantly below the 40 mph limit (at 32 mph) and that vehicles coming onto the roundabout from Spilsby Road or Wainfleet Road are likely to be travelling at even lower speeds. My own observations on my site visit are the there is a good level of forward visibility, both to and beyond the position of the proposed site access, for drivers exiting the roundabout. Also, as was accepted by the County Council in its meetings with the appellant, the development is likely to result in reduced rather than increased average speeds for vehicles travelling north between the roundabout and the site.

19. Although the hospital access opposite the site serves as an access only, with no vehicles exiting at this point, it would be in close proximity to the proposed site access to this junction. I note the County Council's comment about the point at which drivers wishing to turn left into the hospital might begin to decelerate but I do not consider that the appeal proposal would result in an increased risk, given that the hospital access is to the north of the proposed site access junction. A driver wishing to turn right out of the site would need to assess the speed of oncoming traffic and judge whether there is time to complete the intended manoeuvre safely irrespective of whether the oncoming vehicle is turning into the hospital or carrying straight on in the through lane.
20. The details shown on drawing no. NTW/223/100-01 revision P7 appear to allay the County Council's concerns with regard to a reduction in lane widths below 3m and a sharp reduction in the width of the north bound through lane and I do not find that there is any sustainable objection to the proposal on these grounds.
21. That plan also shows that the footway on the western side would be retained at its current maximum width. Whilst the status quo would be maintained in terms of that width the narrowing of the through lane to 3m along this section would have the effect of forcing vehicles to travel closer to the kerb line and would bring vehicles, including HGVs and buses, into closer proximity to pedestrians. Some of the third party representations comment that the existing footway is of inadequate width and that using it can be an uncomfortable and unpleasant experience. The changes resulting from the appeal proposal would be likely to make using the footway less comfortable and could discourage some of those that do make the journey to and from the hospital on foot from continuing to do so. However, given that a footway width of 1.5m is sufficient to allow two people to walk side by side and that the average speeds of northbound traffic would likely be further reduced as a result of the proposal, I have insufficient evidence to conclude that the footway would be unsafe as a consequence of the appeal scheme.
22. The County Council's concerns as to the buildability of the amended footway would normally be technical matters to be resolved at the detailed design stage. However, the need to move the footway further to the west would mean that there is little or no remaining verge onto which pedestrians could step if they needed to do so to pass someone else. The removal of that opportunity would make it more important that full constructional details of the amended footways should be approved because the failure of any part of its construction could further reduce the width of footway available for pedestrian use until such time as an effective repair could be carried out. Whilst this matter would be a concern it is something that could be dealt with by means of an appropriately worded planning condition.
23. Having regard to these considerations I find that, although there may be some reduction in the level of comfort for users of the footway on the western side of the road, appropriate visibility splays and a safe and satisfactory access to the proposed development could be achieved. The proposal would provide safe and suitable access for all people and be consistent with paragraph 32 of the Framework. It would comply with saved Policy T1 of the Boston Borough Local Plan (1999) which states that a new access to an A class road will not be permitted unless it can be demonstrated that there will be no adverse effects on the safety and capacity of the road. It would also comply with saved Local

Plan policies H3 and G6 insofar as these policies presume against development where the proposed means of access is unsatisfactory or where it would cause or significantly aggravate adverse traffic conditions on the public highway.

*Heritage assets*

24. Burton Hall is a Grade II\* listed building dating from the late 16<sup>th</sup> Century and its former stables are separately listed (Grade II) for their special architectural or historic interest. The Hall's historic role was that of a substantial house standing outside of the borough boundary and set in rural surroundings including the fields to the north, west and east. The construction of the hospital and the ribbon housing development to the north of the appeal site have significantly compromised that historic setting and the extensive vegetation on its northern boundary has reduced the Hall's visual relationship with that part of the appeal site which lies to the north. To the east its curtilage is defined by a post and rail fence of modest height and this largely open boundary provides for extensive views from the Hall and its grounds across the fields to the east and north east. Its visual connection with these adjacent fields has survived and the importance of this setting to the hall and the stables can be appreciated in the available views from Wainfleet Road. Based on my observations on my site visit I agree with the advice provided by Historic England that this retained setting is of considerable importance to the significance of both the Hall and its former stables.
25. The amendments that have been made to the scheme are a material improvement on what had previously been proposed. However, the houses proposed at the southern end of the site estate road would still represent a significant encroachment of new built development into the currently open field to the east of the Hall. This element of the proposal would, in my judgement, cause material harm to that important setting of the Hall and the former stables and, hence, to their significance as designated heritage assets. I agree that the harm would be less than substantial but it must be properly weighed in the determination of the appeal.
26. Paragraph 132 of the Framework states that, when considering the impact of a proposed development on the significance of a designated asset, great weight should be given to that asset's conservation. The more important the asset, the greater the weight should be. Paragraph 134 advises that, where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In carrying out that balancing exercise it is necessary to take account of the statutory duty set out in section 66(1) of the 1990 Act that special regard should be had to the desirability of preserving the building or its setting. Regard must also be had to the relevant case law in respect of that statutory duty which has established that a decision maker must give considerable importance and weight to the desirability of preserving the setting of listed buildings when carrying out a balancing exercise in planning decisions.<sup>1</sup>
27. The provision of 76 new dwellings would represent a much needed contribution to housing needs in the borough and the weight to be given to this contribution is increased because of the current absence of a 5 year HLS. The proposal

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<sup>1</sup> East Northamptonshire District Council and others v SSCLG and Barnwell Manor Wind Energy Limited [2013] EWHC 473 Admin.

would provide affordable housing at a level of 20% of the proposed dwellings but the weight to be given to this benefit is reduced because this level of provision is below what would normally be sought because of viability issues. It would also generate economic benefits in terms of New Homes Bonus, construction employment and expenditure and expenditure by the future occupiers of the proposed dwellings in local shops and services.

28. When taken together these public benefits of the proposal are of significant weight. However, regard must be had to the Grade II\* listed status of Burton Hall and to the paragraph 132 requirement that the more important the asset the greater the weight to be given to its conservation. In that context, and in circumstances where the setting of two listed buildings would be harmed, the application of the statutory duty leads me to conclude that these benefits would not be sufficient to outweigh the harm that would be caused to the significance of those designated assets. I therefore conclude that the proposal would conflict with the policies in section 12 of the Framework.

### **Other Matters**

29. Having regard to the extent of vegetation to the site's boundary with No 17 Sibsey Road and to the proposed site layout, which provides that the dwelling on Plot 1 would have no first floor windows in its northern elevation and that the first floor apartment on Plot 13 would have only obscurely glazed windows looking towards the neighbouring property, there would be minimal risk of any loss of privacy for the occupiers of No 17.
30. The policies in section 10 of the Framework steer new development to areas with the lowest probability of flooding and paragraph 101 states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The starting point for consideration of the risk is the Environment Agency's Flood Zone Mapping which shows the whole of the site being within Flood Zone 3 which has the highest probability of flooding.
31. The Flood Risk Assessment submitted with the application identifies a low risk of tidal flooding of the site having regard to the findings of The Boston Borough Council Strategic Flood Risk Assessment (2010). However, notwithstanding the absence of any objection from the Environment Agency or the local Drainage Board, neither the appellant nor the Council has undertaken a sequential test to demonstrate that the proposed development could not be located in an area with a lower risk of flooding. Hence, I have insufficient information to show that the policy tests in section 10 are satisfied. However, in view of my conclusion that the appeal should be dismissed on the grounds of the effect of the proposal on the significance of the heritage assets, I do not need to come to a formal view on this matter.
32. The officer report to Committee suggests that any new housing around the existing development limits of Boston would need to use agricultural land. However, I have seen no evidence to demonstrate the level of development proposed could not be accommodated without involving the loss of 3.75 hectares of Grade 1 agricultural land. Hence, I am unable to conclude that there would be no conflict with the advice in paragraph 112 of the Framework that poorer quality land should be used in preference to the best and most versatile agricultural land. The loss of that land must, therefore, be regarded as a significant adverse effect of the proposal.

33. I consider that the proposal would not cause any detriment to the trees within the Tree Preservation Order and that the other significant trees within the site could be retained and incorporated into the proposed development. I am satisfied that the protection of these trees during construction works and that the preservation of key features of ecological and archaeological interest within the site could satisfactorily be dealt with by means of planning conditions.
34. The proposal would include affordable housing provision at a level of 20% of the units to be developed and this would make a valuable contribution to the provision of such housing in the area. However I note that a lower level of provision than that normally sought under the Council's development plan policies has been agreed following the submission of a viability appraisal. Also for viability reasons, the proposal would not provide any of the other developer contributions which the Council would normally seek from a development of this type and scale.

### **Conclusions**

35. For the reasons set out above I conclude that the proposal would result in harm, at a less than substantial level, to the significance of the designated heritage assets and that this harm would not be outweighed by the public benefits of the proposal; the proposal would, therefore, conflict with the policies set out in section 9 of the Framework.
36. The Framework's heritage policies are examples of the 'specific policies' referred in the second limb of the fourth bullet to that paragraph<sup>2</sup> and these policies indicate that development should be restricted in this case. I also find that the harm to the designated heritage assets and the loss of Grade 1 agricultural land are adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal, notwithstanding the current absence of a 5 year HLS. Accordingly the proposal would not constitute sustainable development and the paragraph 14 presumption in favour of a grant of planning permission does not apply.
37. For these reasons, and having regard to all matters raised, I conclude that the appeal should fail.

*Paul Singleton*

INSPECTOR

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<sup>2</sup> Footnote 9 to paragraph 14