

**BOSTON BOROUGH COUNCIL**

**Planning Committee – 20 June 2017**

Reference No: B/16/0465

Expiry Date: 20 July 2017

Application Type: Outline Planning Permission  
Proposal: Outline application for residential development (up to 42 dwellings) with all matters reserved for later consideration

Site: Land to the rear of nos. 1a - 15 Watery Lane, Butterwick, Boston, Lincolnshire, PE22 0HS

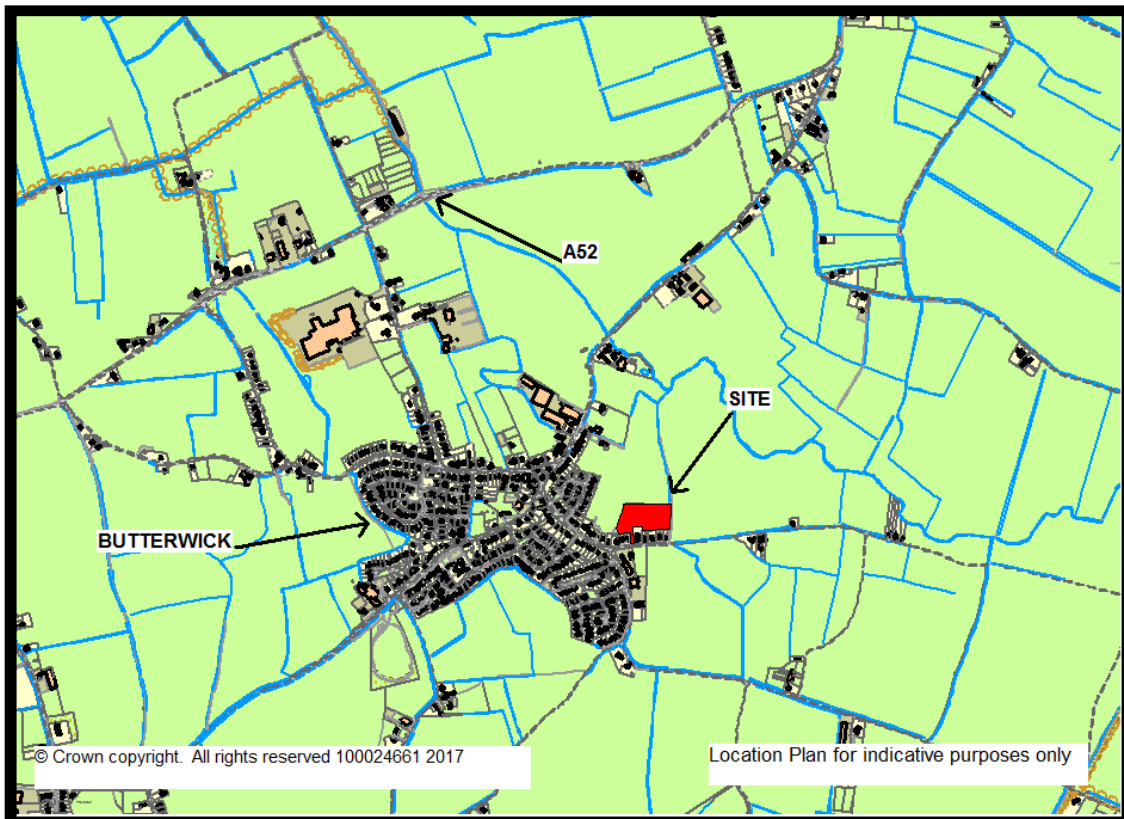
Applicant: Mr & Mrs R F & J Warth

Ward: Coastal  
Parish: Butterwick Parish Council

Case Officer: Polly Harris Gorf

Third Party Reps: 0

**Recommendation: Delegate to Grant**



## **1.0 Reason for Report**

- 1.1 The application is presented to Planning Committee at the decision of the Development Control Manager in order that the merits of the application and the associated policy issues, together with the provisions of the proposed s.106 planning obligation are considered by Members.

## **2.0 Application Site and Proposal**

- 2.1 The application site is immediately outside the settlement limits of Butterwick, accessed via an access track from Watery Lane and lies within an area identified as “danger for most” with low probability of tidal or fluvial flooding and flood zone 3. The land comprises approximately 1.17 hectares and includes semi-vacant hardstanding, storage buildings and paddock. The land sits to the rear of Nos. 1A to 15 Watery Lane and is also visible from properties in Peter Paine Close.
- 2.2 Watery Lane is a rural lane and is characterised at this point by a mix of sizes, types and ages of single and two storey dwellings. The easternmost boundary of the site is marked by a drain and farm track.
- 2.3 The application is in outline with all matters reserved (layout, scale, access, appearance and landscaping) for later consideration in order to establish the principle of the development of the land for up to 42 dwellings. Although this is entirely in outline, access is indicated via the track from Watery Lane, between Nos. 3B and 5.
- 2.4 The application is supported by a design and access statement, a planning statement, a Flood Risk Assessment and preliminary drainage strategy.
- 2.5 An indicative plan has been submitted to show how 42 dwellings, access and open space provision could be accommodated on the site. This plan would not tie the development of the site to this layout.
- 2.6 With regard to affordable housing, the applicant has indicated a willingness to provide affordable housing and agrees in principle to the payment of an education contribution, which would require a planning obligation.

## **3.0 Relevant History**

- 3.1 There is no history relevant to this site, however permission was granted in April 2015 (B/15/0088 refers) for the demolition of the existing building and erection of two dwellings at 15 Watery Lane. This development has taken place.

## **4.0 Relevant Policy**

### **Boston Borough Local Plan**

- 4.1 The development plan consists of the saved policies of the Boston Borough Local Plan (Adopted 1999). S.38 (6) of the 2004 Act requires that determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 4.2 The site lies within countryside abutting settlement development limits, in an area where new development is controlled by Policy CO1. The access to the site lies within the settlement limits where Policy H2 could apply.
- 4.3 The saved Local Plan Policies of relevance to this application are as follows:
- Policy G1 – Amenity
  - Policy G2 – Wildlife and Landscape Resources
  - Policy G3 – Surface and Foul Water Disposal
  - Policy G4 - Safeguarding the Water Environment
  - Policy G6 – Vehicular and Pedestrian Access
  - Policy CO1 – Development in the Countryside
  - Policy T2 – Roads and Footpaths in New Development
  - Policy H2 – Windfall housing
  - Policy H3 – Quality of housing developments
  - Policy H4 – Open Space on Housing Estates
  - Policy H7 – Low cost housing for local needs (in the open countryside)
- 4.4 Policy H2: Windfall Housing Sites begins with ‘Within settlements..’. The application site is entirely outside of settlement development limits but for the access. So in line with the Monarchs Road appeal decision, Policy H2 applies here.
- 4.5 There are no current saved policies to guide housing development and the lack of a five year supply of housing land means that any policies that are to do with housing supply are ‘out of date’. The May 2017 decision of the Supreme Court in the Cheshire East/Suffolk Coast cases appears to confirm that policies like CO1 are not policies for the ‘supply of housing’, contrary to what the Court of Appeal had determined earlier. Thus we seem to have returned to a point where full weight could be given to Policy CO1. However, the fact that the proposed development would be within countryside does not by itself make it unacceptable in principle. But for Policy CO1, the development plan is either silent or out of date on the question of the in-principle development of this site.

### **National Planning Policy Framework**

- 4.6 Paragraph 14 repeats the presumption in favour of sustainable development from elsewhere in the Framework and seeks the speedy approval of proposals that accord with the development plan and, where the plan is “absent, silent or relevant policies are out of date”, to grant permission unless the adverse impacts would significantly and demonstrably outweigh the benefits; or that policies in the NPPF indicate development should be restricted. The general effect of para 14 is now clearer following the Supreme Court judgment - in the absence of relevant or up to date policies – the balance is tilted in favour of permission – ‘the tilted balance’.

- 4.7 However, and almost irrespective of paragraph 14, since it is inevitable in the light of a lack of a five year supply that sustainable greenfield sites will be candidates for new housing supply, the weight given to the restrictive policy CO1 needs to be judged against the need for development. The Framework does not replace the primacy given to the statutory development plan.
- 4.8 The NPPF addresses the concept of sustainable development and the three dimensions of economic, social and environmental roles which the planning system should perform.

### **Emerging Policy**

- 4.9 The SELLP is not a part of the development plan and s.38 (6) does not apply until it has been adopted. It is not known at this point what the final form of the (SELL) Plan will be and how it might change as a result of consideration of representations and examination. Thus limited weight may be given to the emerging plan at this stage and it is not sufficiently advanced to be able to say that this application is premature (NPPF and PPG guidance). Similarly, although Butterwick is identified as one of the settlements where new housing development for the Borough is proposed to take place, to consolidate and strengthen these settlements; this similarly should not be determinative of this application.

### **5.0 Representations**

- 5.1 The application was advertised in the press and a site notice was displayed and neighbouring residents were notified by letter. No responses have been received.

### **6.0 Consultations**

- 6.1 Butterwick Parish Council has no objection.
- 6.2 The County Highway Authority/LLFA states that there is no existing footway on Watery Lane to connect this proposed residential development to the existing footway network within the village. There is a request for the application to provide a 1.8 metre wide footway on the south side of Watery Lane, since the applicant owns this land. There are also comments to do with the preferred method of surface water run-off.
- 6.3 The County Council Education Service, based on the indicative layout, has requested a contribution of £103,384, to increase capacity of secondary and sixth-form provision. The County Council seeks that a S.106 agreement is entered into in this case, noting the significant cumulative impact of this application alongside other developments currently proposed in Butterwick and surrounds. Without a capital contribution the education infrastructure will be unable to match pupil numbers and an objection considered otherwise. LCC would suggest the s.106 monies are paid at the halfway point in the development to allow timely investment by LCC whilst not adversely affecting the developer's viability.

Officer note – as this application is in outline with all matters reserved, this dwelling mix is likely to change, and a Section 106 legal agreement to seek payment in principle would be required, rather than an agreement specific to the indicative dwelling mix. This is under discussion with the various parties involved.

- 6.4 Environmental Protection has no objections in principle, however ask that conditions relating to contaminated land are attached to any consent in order that as part of any development the land is assessed and where necessary remediated suitable for residential use.
- 6.5 The Local Housing Authority does not object to the proposed 24% level of affordable housing. Advice is offered on the type of provision and that the applicants should engage with a Registered Housing Provider. Dependent upon other contributions, the authority concludes that the affordable provision may need to be addressed in a planning obligation.
- 6.6 The Environment Agency initially objected to this application on the grounds of bungalows shown on the indicative drawings. Following clarification that the drawings are indicative and do not tie the development to the layout shown, the Environment Agency removed the objection, subject to the imposition of a condition, set out below.
- 6.7 Anglian Water considers that adequate arrangements are made for foul drainage, sewerage and surface water disposal; however suggest a condition to provide a surface water management strategy. This is set out below.
- 6.8 The Witham Fourth Internal Drainage Board make no objection and comment that the preferred route for surface water drainage would be to a point south of the site. This information will be passed to the applicant.
- 6.9 NHS England has replied that it does not request contributions on this scheme.

## **7.0 Planning Issues and Discussions**

- 7.1 The key issues to address in considering this proposal are the principle of the development, sustainability, impact on the character of the area, the access and wider highway matters, flooding and contamination.

### **Principle of Development**

- 7.2 The application site is outside the settlement of Butterwick and as such is in open countryside for Local Plan purposes. The policy framework is set out above and it can be seen that on the face of it development of this land may not be acceptable in principle. However the lack of a 5 year land supply and the presumption in favour of sustainable development would suggest, given the facilities available in Butterwick, that development is acceptable in principle subject to other detailed policy issues being addressed.

## **Sustainable Development**

- 7.3 The applicant's Statement in support addresses the NPPF strands of economic, community or environmental benefits that would accrue as a result of this scheme.
- 7.4 It is accepted that the provision of up to 42 dwellings in this location would contribute to the housing stock of new dwellings, of which there is an identified need, however this need is to be balanced against other policies regarding the amenity and visual and other impact of the proposals.

## **Visual Impact and Character of the area**

- 7.5 The application site in part has been used for storage and still contains buildings, glasshouses and a significant area of hardstanding and parking areas. The development of this land for housing would be a visual improvement to the area and to the adjoining residents by removing a potentially disruptive use. In addition the development of this land for housing would largely remove the need for HGVs and farm vehicles to visit the site.

## **Access and Highway Matters**

- 7.6 The development of this site for housing would lead to an increase in car movements within Watery Lane, but would remove the movement of HGVs and farm vehicles manoeuvring into and from the site. This would be an improvement in terms of the lessening of larger vehicles using the site and Watery Lane. It is to be noted that the highway authority do not object to the development.
- 7.7 With regard to the impact of car use alongside the properties at Nos. 3B and 5, Watery Lane, the increase in car movements along an approximate 8m wide access is to be balanced against the removal of commercial vehicle movements from the site, which, in conjunction with the wider environmental benefits is considered on balance to be acceptable.
- 7.8 Looking at pedestrian safety, Watery Lane does not currently have a footway linking this site or properties in the lane to the wider village. The applicant has agreed to provide a footpath, at the suggestion of LCC Highways officers, on land in their ownership on the south side of Watery Lane, from opposite the site entrance to a point at the junction of Watery Lane with Sea Lane. This is considered to represent a significant improvement in pedestrian safety within the lane.

## **Relationships to Existing Dwellings**

- 7.9 This application is in outline only, and the specific relationship of the development to the existing dwellings that back onto the site would be dealt with at the reserved matters stages. Apart from some very close relationships to the rears of Watery Lane properties, the indicative plans otherwise show how a development of 42 dwellings could be accommodated in the site.

## **Flooding and Contamination**

- 7.10 Due to the location of the land a Flood Risk Assessment was submitted in support of the development of the site, and this is accepted as being adequate by the Environment Agency, Anglian Water and the Internal Drainage Board. The specific details would be dealt with at the reserved matters stage, and in addition conditions are appended below.
- 7.11 There is the potential that there may be residual contaminants on the site as a result of previous uses and this would be dealt with by conditions on any approval.

## **Conclusion**

- 7.12 The application site is outside the settlement development limits of Butterwick, but given its facilities and that there have been significant Plan allocations in the past would suggest that further housing can be acceptable. In view of the lack of a 5 year housing land supply and that CO1 may only attract limited weight (paras 4.5 and 4.7 above) the countryside location cannot be used to resist development of this site for housing at this time.
- 7.13 It is considered that the development of the site for residential development needs to be weighed in conjunction with the environmental benefit of developing the land, and in conjunction with the other elements of sustainability. It is considered that this land would lend itself to development for housing, given its proximity to the wider village.
- 7.14 The location of this land lends itself to development, and given the existing buildings on part of the site and the historic use of the land, would be an improvement of the mix of uses in the area, whilst contributing to the provision of both affordable and market housing in the settlement. For these reasons it is considered that on balance the development of this land for housing with open space would be acceptable.

## **8.0 Recommendation**

- 8.1 It is recommended that Committee delegate authority to the Development Control Manager to grant outline planning permission subject to the signing of an appropriate Section 106 planning obligation to ensure the delivery of affordable housing and education contributions and subject to the following conditions and reasons. If an obligation is not concluded within three months, the application will be returned to Committee.

1. No development shall commence until details of appearance, access, layout, landscaping and scale of the development (hereafter referred to as the “reserved matters”) have been submitted to and approved by the Local Planning Authority.

**Reason:** This is an outline application only and such details must be approved before development commences in order to comply with the objectives of Local Plan policies G1 and H3 and required to be imposed pursuant to Section 92 of the Town & Country Planning Act 1990.

2. Application for approval of all reserved matters shall be made to the Local Planning Authority not later than the expiration of three years from the date of this permission.

**Reason:** Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

**Reason:** Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990.

4. The development hereby permitted shall be carried out in accordance with the following approved plans –

- Site Location Plan 16033-001-01 (1/3)
- Flood Risk Assessment prepared by Sensus Architecture Ltd received by the LPA on 1 Nov 2016.

**Reason:** To ensure the development is undertaken in accordance with the approved details and to accord with Adopted Local Plan Policies G1 and G3.

5. No more than 42 dwellings shall be erected on the site.

**Reason:** To define the permission and to accord with Adopted Plan Policy G1.

6. No part of the development shall be occupied before works to improve the public highway, by means of the provision of a 1.8 metre wide footway on the south side of Watery Lane, from opposite the site entrance to a point at the junction of Watery Lane with Sea Lane, together with suitable dropped kerb crossings on each side of Sea Lane, have been completed in accordance with details to be submitted to and approved by the local planning authority.

**Reason:** To ensure safe access to and from the site and each dwelling/building to the wider settlement in the interests of residential amenity, convenience and safety and to accord with Adopted Local Plan Policies G1 and G6.

7. The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment submitted by Sensus Architecture Ltd including the following mitigation measures:

- All dwellings shall be a minimum of 2 storeys, dormer or chalet bungalows being included in this definition
- Finished floor levels shall be no lower than 1m above existing ground levels
- Demountable defences to a height of 600mm shall be incorporated into the design
- Flood resistance and resilience measures shall be incorporated as described

The mitigation measures shall be incorporated prior to occupation and subsequently remain in place.

**Reason:** To reduce the risk and impact of flooding, in accordance with Adopted Local Plan Policy G3.



8. No drainage works shall commence until a surface water management strategy has been submitted to and approved in writing by the Local Planning Authority. No hard-standing areas to be constructed until the works have been carried out in accordance with the surface water strategy so approved unless otherwise agreed in writing by the Local Planning Authority.  
**Reason:** To prevent environmental and amenity problems arising from flooding, in accordance with Adopted Local Plan Policy G3.
9. The development hereby permitted shall not be commenced until details of a comprehensive contaminated land investigation has been submitted to and approved by the Local Planning Authority and until the scope of works approved therein have been implemented. The assessment shall include all of the following measures unless the Local Planning Authority dispenses with any such requirements in writing:  
A Phase I desk 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 study shall establish a 'conceptual model' of the site 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 study and a non-technical summary shall be submitted to the Local Planning Authority.  
**Reason:** To ensure potential risks arising from previous site uses have been fully assessed and to with accord Adopted Local Plan Policies G1 and G3.
10. Where the assessment (see preceding condition) identifies any unacceptable risk or risks, a detailed remediation strategy to deal with land contamination and/or pollution of controlled waters affecting the site shall be submitted and approved by the Local Planning Authority. No works, other than investigative works, shall be carried out on the site prior to receipt of written approval of the remediation strategy by the Local Planning Authority.  
**Reason:** To ensure the proposed remediation plan is appropriate and to with accord Adopted Local Plan Policies G1 and G3
11. Remediation of the site shall be carried out in accordance with the approved remediation strategy (see preceding condition). No deviation shall be made from this scheme without the express written agreement of the LPA.  
**Reason:** To ensure site remediation is carried out to the agreed protocol and to accord with Adopted Local Plan Policies G1 and G3
12. On completion of remediation, two copies of a closure report shall be submitted to the Local Planning Authority. The report shall provide validation and certification 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.  
**Reason:** To provide verification that the required remediation has been carried out to the required standards and to accord with Adopted Local Plan Policies G1 and G3

13. If, during development, contamination not previously considered is identified, then the Local Planning Authority 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 with the LPA.

**Reason:** To ensure all contamination within the site is dealt with and to accord with Adopted Local Plan Policies G1 and G3.

14. The detailed layout shall incorporate an area or areas of public amenity open space/children's play area comprising not less than 7.5% of the gross site area which maximises as far as possible its amenity value. The area(s) of public amenity open space which shall include the provision of play equipment shall be laid out in a manner to be agreed in writing by the Local Planning Authority and made available for use before 50% of dwellings constructed on the application site are first occupied. This area shall not at any time be incorporated within the curtilage of a dwelling.

**Reason:** To provide a satisfactory level of publicly available amenity open space within the development and to accord with the objectives of Policy H4 of the Boston Borough Local Plan.

15. A landscape management plan including management responsibilities and maintenance schedules of the public amenity open and recreation space including play equipment shall be submitted to the Local Planning Authority before the 10th dwelling constructed on the application site is first occupied. The landscape maintenance plan shall be carried out as approved thereafter.

**Reason:** To ensure the long term maintenance of the public open space and play equipment, in the interests of the amenity of residents and to accord with the objectives of Local Plan Policy H4.

In determining this application the authority has taken account of the guidance in paras 186 – 187 of the NPPF (2012) in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.

**Paul Edwards**  
**Development Control Manager**