



Appeal Decisions

Site visit made on 15 March 2018

by **D Guiver LLB (Hons) Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 26 June 2018

Appeal A Ref: APP/Z2505/W/17/3189604

Land North of Spalding Road, Sutterton, Boston PE20 2ET

- 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 and Mrs Pacey against the decision of Boston Borough Council.
 - The application Ref B/17/0061, dated 9 February 2017, was refused by notice dated 19 May 2017.
 - The development proposed is residential development for up to five dwellings.
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Appeal B Ref: APP/Z2505/W/17/3189797

Land North of Spalding Road, Sutterton, Boston PE20 2ET

- 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 and Mrs Pacey against the decision of Boston Borough Council.
 - The application Ref B/17/0359, dated 4 September 2017, was refused by notice dated 8 November 2017.
 - The development proposed is residential development for up to five dwellings.
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Decisions

1. Appeal A is allowed and planning permission is granted for residential development for up to five dwellings at Land North of Spalding Road, Sutterton, Boston PE20 2ET in accordance with the terms of the application, Ref B/17/0061, dated 9 February 2017, subject to the conditions in the attached Schedule marked *Appeal A*.
2. Appeal B is allowed and planning permission is granted for residential development for up to five dwellings at Land North of Spalding Road, Sutterton, Boston PE20 2ET in accordance with the terms of the application, Ref B/17/0359, dated 4 September 2017, subject to the conditions in the attached Schedule marked *Appeal B*.

Application for costs

3. A single application for costs was made by Mr and Mrs Pacey against Boston Borough Council in respect of both Appeal A and Appeal B. This application is the subject of a separate Decision.

Preliminary Matters

4. I have adopted the Council's description of the appeal site as this is more succinct.

5. Drawings showing proposed access and site layout were submitted with the application subject to Appeal A, but the application form states that planning permission is sought in outline with all matters save access reserved for future determination and I have considered Appeal A on this basis.
6. The application subject to Appeal B is made in outline with all matters save access reserved for future determination. Drawings showing the proposed site access were submitted with the application and I have had regard to these in determining Appeal B.

Main Issues

7. The main issues are the effect of the proposed development on:
 - a) the living conditions of the occupiers of neighbouring dwellings with particular regard to potential noise and disturbance from traffic movements (Appeal A only); and
 - b) the character and appearance of the area (Appeal A and Appeal B).

Reasons

8. The appeal site comprises a portion of an open field to the rear of a number of existing bungalows fronting Spalding Road. The land is open to the rear although the site is bordered on three sides by drainage ditches. To the east and south the area is built up with a mix of housing and commercial/industrial units. There is some housing to the north, albeit some distance away on Wigtoft Road. The land lies open mostly to the west but there is some development on Spalding Road that extends further west than the boundary of the appeal site.

Appeal A

Living Conditions

9. The proposed access lies between two existing dwellings known as Fenbank and Jesmond, and is currently in the form of an unmade track used by farm vehicles entering the site. From the plans and observations on my site visit the track appears to be the only feasible point of entry for traffic. The proposal would entail the construction of a hard surface pedestrian and vehicular access.
10. Fenbank and Jesmond are bungalows and each sits relatively close to their respective boundaries with the track which is delineated at each dwelling by a close boarded fence. Each bungalow has habitable rooms and windows close to the boundary. The proposal is for the construction of up to five dwellings that would inevitably lead to an increased number of pedestrian and vehicular journeys using the access track. Given the proximity of the track to the habitable rooms at the adjoining bungalows, the likely increase in journeys would cause significant noise and disturbance from vehicles and pedestrians. This would be a particular issue in warmer weather when windows are more likely to be open for ventilation.
11. In the absence of any mitigation measures in the scheme to address the likely impact of noise and disturbance from pedestrian and vehicular traffic, the proposed development would have an unacceptable detrimental impact on the living conditions of the occupiers of Fenbank and Jesmond. However, the appellants proposed changes to the scheme that would provide for mitigation

similar to the measures the Council found acceptable in the application subject to Appeal B. Because it was made after the period of consultation expired and interested parties had not had an opportunity to comment, the Council did not consider this amended proposal in its decision. Nevertheless, the measures have subsequently been formally considered by the Council as part of the scheme that forms Appeal B. I am therefore satisfied that taking account of the revisions would not prejudice any party to Appeal A.

12. The proposed mitigation measures would be adequate to address the issues of noise and disturbance and subject to the implementation of those measures, the proposal would be in accordance with Policy G1 of the Boston Borough Local Plan 1999 (the Local Plan) which seeks to ensure that developments do not substantially harm the living conditions of occupiers of neighbouring dwellings and Policy G6 which seeks to ensure that developments have satisfactory pedestrian and vehicular access.

Character and Appearance

13. Policy CO1 of the Local Plan seeks to ensure that developments do not take place in the open countryside unless supported by other Local Plan Policies. Policies H3 and G1 of the Local Plan seek to ensure that new housing developments are compatible with the existing character and appearance of the location where development will take place. The appeal site lies outside the development boundary of Sutterton so despite the built-up area abutting the site, it is in the open countryside.
14. The plans show that the northern boundary of the site is approximately level with the northern elevation of the neighbouring property at Elm Lodge. The western site boundary is east of the existing commercial buildings fronting Spalding Road on the same side of the carriageway as the appeal site. In my opinion the proposed development would not significantly extend the boundary of the settlement into the open countryside when juxtaposed with its neighbours to the east and west.
15. The built form of the village in the vicinity of the appeal site is an eclectic mix of housing and commercial units, with no dominant architectural style. Ad hoc development has resulted in an ill-defined edge to the village where it transitions to the open countryside. The proposed development would provide a neater edge to the village in this location that would enhance the character of the area and would be complementary to the appearance of existing structures and spaces.
16. I consider that the proposal would accord with Policies G1 and H3 of the Local Plan insofar as they relate to character and appearance. Subject to mitigation measures to ensure compliance with Policies G1 and G6 insofar as they relate to living conditions the proposal would also be in accordance with Policy CO1 of the Local Plan.

Appeal B

17. The application subject to Appeal B is similarly made in outline and the site boundary shown on the plans is identical to the application subject to Appeal A. For reasons similar to those mentioned above, the proposed development would not significantly extend the boundary of the settlement into the open countryside and would provide a neater edge to the village that would enhance the character and appearance of the area.

18. The proposal for the access to the site shows an acoustic fence on either side that would significantly reduce noise and disturbance. I note that the Council reached a similar conclusion and therefore the impact of traffic did not form part of the reason for refusal. Consequently, and for similar reasons, I consider that the proposal would accord with Policies G1 and H3 of the Local Plan and therefore would also accord with Policy CO1.

Other Matters

19. Interested parties have raised concerns about the impact of the proposal on privacy. However, layout, scale and boundary treatments are reserved matters and appropriate provision to prevent the development having an unacceptable impact on the privacy of neighbouring residents can be addressed appropriately at reserved matters stage. Interested parties also raised concerns about pedestrian safety due to the width of the access road. From observations on my site visit I consider that the existing track is wide enough to accommodate the safe passing of vehicles and pedestrians. I note that the highways authority reached a similar conclusion and raised no objection to the proposed access.

20. The appellants have raised a concern about declarations of interests by a Councillor who was a member of the committee that considered the application subject to Appeal A, but withdrew from the committee considering the application subject to Appeal B due to a pecuniary interest. However, it is not within the scope of this appeal to make determinations about the Council's conduct of its planning process and this is a matter between the Council and the appellants. The comments made have had no effect on my decision in either appeal.

21. I have also been referred to a number of other decisions where planning permission was given. However, while these sites were within the same settlement they were not directly comparable with the specific circumstances of the applications subject to these appeals and therefore attract limited weight. In any event I have considered these appeals on their own merits.

Planning Balance and Overall Conclusion

22. The Council accepts that it cannot demonstrate a five-year housing land supply (HLS). Paragraph 49 of the National Planning Policy Framework (the Framework) states that in the absence of HLS local development plan policies relating to housing supply should not be considered up-to-date. Paragraph 14 of the Framework states that where the development plan is not up to date there is a presumption in favour of granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework Policies taken as a whole.

Appeal A

23. I have concluded that the proposal would not cause harm to the character and appearance of the area or, subject to mitigation measures, the living conditions of the occupiers of the dwellings at Fenbank and Jesmond by reason of noise and disturbance and so is in accordance with the Policies in the Development Plan, when taken as a whole, including Policy CO1. I have been provided with no material considerations which would lead me to determine the appeal other than in accordance with the development plan in this case.

Appeal B

24. I have concluded that the proposal would not cause harm to the character and appearance of the area and so is in accordance with the Policies in the Development Plan, when taken as a whole, including Policy CO1. I have been provided with no material considerations which would lead me to determine the appeal other than in accordance with the development plan in this case.

Conditions

25. 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.
26. 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. In the interests of protecting the living conditions of the occupiers of neighbouring properties I have imposed a condition requiring installation of the proposed acoustic fence before first occupation of any dwelling on the site. To ensure that access to the site is adequately maintained I have imposed a condition requiring the submission of details of future management and maintenance for approval. I have limited this to the access road as the construction and maintenance of other road surfaces on the site will be dealt with at the detailed approval stage.
27. To ensure adequate drainage and mitigate any flooding risk I have imposed conditions for the approval of foul and surface water disposal and for the development to be carried out in accordance with the approved Flood Risk Assessment. To ensure adequate household waste disposal, I have imposed a condition requiring submission of details for refuse collection.
28. I have not imposed a condition relating to the maximum number of dwellings as this is provided for in the permission and I have not included a condition relating to turning spaces as site layout is a reserved matter.

Conclusion

29. Consequently for the reasons given above, and taking into account all other matters, I conclude that Appeal A and Appeal B should succeed.

D Guiver

INSPECTOR

Schedule

Appeal A

- 1) 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.
- 2) 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.
- 3) 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: J1468-PL-01 Rev A03 (insofar as it delineates the access and site boundaries) and J1468-PL-02 Rev A01.
- 5) No dwellings hereby permitted shall be occupied before the acoustic fence shown on drawing No. J1468-PL-02 Rev A01 shall have been erected and the fence shall thereafter be retained in good repair.
- 6) Notwithstanding condition 4 no development shall take place until details of the arrangements for future management and maintenance of the access road have been submitted to and approved in writing by the local planning authority. Development shall be carried out and thereafter maintained in accordance with the approved details.
- 7) Development shall not commence until drainage works for foul and surface water disposal shall have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority, which shall include any measures to be taken to prevent the escape of water onto neighbouring land.
- 8) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment dated 9 February 2017 compiled by Origin Design Studio, including mitigation measures identified in the report.
- 9) Development shall not commence until arrangements are in place for the location of household waste for collection in accordance with details which shall have been submitted to and approved in writing by the local planning authority.

Appeal B

- 1) 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.
- 2) 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.
- 3) 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.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: J1468a-PL-01 Rev A01, J1468a-PL-02 Rev A01 and J1468a-PL-03 Rev A01.
- 5) No dwellings hereby permitted shall be occupied before the acoustic fence shown on drawings Nos. J1468a-PL-02 Rev A01 and J1468a-PL-03 Rev A01 shall have been erected and the fence shall thereafter be retained in good repair.
- 6) Notwithstanding condition 4 no development shall take place until details of the arrangements for future management and maintenance of the access road have been submitted to and approved in writing by the local planning authority. Development shall be carried out and thereafter maintained in accordance with the approved details.
- 7) Development shall not commence until drainage works for foul and surface water disposal shall have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority, which shall include any measures to be taken to prevent the escape of water onto neighbouring land.
- 8) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment dated 9 February 2017 compiled by Origin Design Studio, including mitigation measures identified in the report.
- 9) Development shall not commence until arrangements are in place for the location of household waste for collection in accordance with details which shall have been submitted to and approved in writing by the local planning authority.