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## Appeal Decision

Site visit made on 7 February 2018

by **John Morrison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2018

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**Appeal Ref: APP/Z2505/W/17/3185262**

**Former Garage, Brand End Road, Butterwick PE22 0JD**

- 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 G Walden against the decision of Boston Borough Council.
  - The application Ref B/17/0056, dated 3 February 2017, was refused by notice dated 27 March 2017.
  - The development proposed is described as the 'demolition of the two existing buildings and outline for up to two residential detached dwellings'.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of the two existing buildings and outline for up to two residential detached dwellings at Former Garage, Brand End Road, Butterwick PE22 0JD in accordance with the terms of the application, Ref B/17/0056, dated 3 February 2017 and subject to the conditions set out in the attached schedule.

### Procedural Matter

2. I have sought the views of the appellant and the Council on a recent judgement<sup>1</sup> which, amongst other things, clarified what is to be taken by the term 'isolated' for the purposes of paragraph 55 of the Framework<sup>2</sup>. I have taken any comments made into account in my decision.

### Main Issues

3. There are two main issues. These are a) the principle of the proposed development with specific regard to its location and b) its effect on the character and appearance of the area.

### Reasons

#### *Context*

4. The appeal site is an irregular parcel of flat land situated to the south side of Brand End Road. It consists mainly of hardstanding and a collection of single storey buildings associated with the storage and repair of motor vehicles. There are residential dwellings opposite and either side. Open agricultural fields lie beyond the rear boundary to the south, itself being formed by what

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<sup>1</sup> Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)

<sup>2</sup> The National Planning Policy Framework 2012

remains of a close boarded fence (concrete posts and kick boards). The appeal site is part of a ribbon form of development that is visually distinct from what is arguably the village's main built up area. It is outside of the settlement as it is defined by the development plan and as such, in planning terms, part of the countryside.

5. The proposed development seeks to demolish the existing buildings and erect up to two dwellings. The appeal scheme seeks outline planning permission with all matters reserved for future consideration.

#### *The Principle of Development*

6. The Council make reference to the fact that the appeal site is outside of the settlement envelope as it is defined by the Local Plan<sup>3</sup>. It is therefore in the countryside and by definition, having regard to the direction of the plan to direct new development to within settlements and limit it in the countryside. They therefore consider that the principle of the scheme would be unacceptable. There would be some harm arising from the resulting policy conflict<sup>4</sup>.
7. The Council also refer to paragraph 55 of the Framework which states that isolated homes in the countryside should be avoided, reinforcing the sustainable approach to the siting of new housing development in rural areas. In coming to a view on whether the dwelling would be isolated I have had regard to the recent judgement referred to above. The judgement states that the term isolated, for the purposes of the Framework should be taken as its ordinary dictionary meaning of far away from other places, buildings or people; remote.
8. In my view, the two dwellings would not be spatially or indeed socially isolated. They would be close to other buildings and occupiers would be close to other residents. Whilst I shall come onto a more full assessment of the effect of the appeal scheme on the character and appearance of the area later, the proposed development would appear as part of a cogent group of other buildings. In terms of its location relative to places, the appeal site may be visually distinct from the built up area of Butterwick but it is connected to it by a lit segregated footway and, according to my own findings on site, in the region of a ten minute brisk walk from a post office, general store, chip shop, village hall and public house.
9. This may arguably represent a limited service provision but the scale of the proposed development is equally limited. As such, and whilst additional (likely car borne) journeys will arise through occupiers needing to access employment, education and healthcare, these journey will not be significant in number or scale. When also considering that as commercial premises, the existing use of the site is already a destination in its own right. I have regard to paragraphs 29 and 34 of the Framework in this respect<sup>5</sup>.

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<sup>3</sup> Boston Borough Local Plan 1999

<sup>4</sup> Saved Policy CO1 of the Boston Borough Council Local Plan 1999

<sup>5</sup> Opportunities to maximise sustainable transport solutions will vary from urban to rural areas and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised.

10. With these factors in mind, I do not take the view that the appeal site, or rather the development thereof, would result in isolated dwellings, in the countryside though they may be.
11. In terms of the two main aims for limiting development in the countryside I shall come onto protecting its specific character and intrinsic beauty in my assessment on character and appearance. In terms of its aim to focus development to those areas that have a ready access to supportive services that can be accessed sustainably and thus minimising the need to travel, I find that the principle of the development would be acceptable, having regard to the circumstances of the appeal site and the assertions of paragraph 55. The need to explore any special circumstances therefore falls away.

#### *Character and Appearance*

12. The appeal site is not part of the main built up area of the village. It is however part of a small built up area of its own. It forms a street scene of sorts with built development either side and opposite. The proposed development would result in the removal of what are, arguably, buildings not of any particular merit architecturally. With regard to surrounding development types, two dwellings would sit far more harmoniously with the street scene than these existing buildings. I accept there would be some form of urbanising effect to the appeal site but then again I would not consider it overly rural to begin with. It is currently visually distinct and defined by clear boundaries from the more open and undeveloped agricultural fields beyond and the proposed development would not expand further than the site's existing limits.
13. The appeal scheme seeks outline planning permission and as such there are no fixed matters of design before me. Through the use of appropriate form and materials a suitable solution seems eminently possible. Indeed, there is something of a mix of architectural styles locally as well as single and two storey designs. In essence, the proposed development would be contained and of a small scale relative to its wider and predominantly rural context. It would be the redevelopment of previously developed land to which support is lent via one of the aims of the Framework.
14. The crux of the Council's concerns in respect of the effect of the appeal scheme in this regard stems from how it would, in their words, consolidate a group of existing dwellings by filling a gap. Thus the proposed development would not sit appropriately with the prevailing pattern of development.
15. I do not agree. Principally since the so called gap currently contains built development. Any new dwelling may arguably be taller than the existing buildings but the gap is neither clearly defined nor one that contributes significantly or positively to the character of the area by being so. Secondly, The consolidation of what would be a group would bear similarities to the remaining small clusters of ribbon development that occur either side of Brand End Road and more noticeably to the western side of Homers Lane. Most importantly, the proposed development would not impinge on any of the larger and more open areas where agricultural fields directly abut the back edge of the highway. These areas, to my mind, contribute far more significantly to the prevailing rurality of the edge of the village than necessarily the appeal site.
16. The Council have made comment on the precedent value of granting a planning permission in this case. They have concern as to how the same could be

argued of other small sites on the fringes of both Butterwick and other villages in the district to justify new development.

17. On one hand I can appreciate this concern. However, I have given weight in my consideration of the effects of the scheme to the particular characteristics of the site such as the presence of existing buildings, its contextually small size and limited nature of the proposals. I have also referred to how other road edge sites, with regard to the fringes of Butterwick specifically, define the rurality of the area and thus reinforce its prevailing character. The appeal site is previously developed and the scheme would represent something of an enhancement over the existing situation. I cannot be certain that all of these factors together would relate to other such edge of village sites elsewhere in the district and it is important to emphasise that each development proposal should be considered on its own merits and, specifically in this case, with due regard to its own individual context.
18. With this in mind, I am content that the proposed development would not be harmful to the character or appearance of the area and thus not conflict with either one of the core principles of the Framework in protecting the character and intrinsic beauty of the countryside or saved Policy G1 of the Local Plan which seeks to ensure, amongst other things, that new development does not substantially harm the general character of the area.

#### *The Balance*

19. The Council do not contend that they are unable to demonstrate the supply of housing sites as required by the Framework. Consequently, and as per the assertions of paragraph 49, the development plan policies relevant to the supply of housing cannot be considered up to date. I have referred to these above in the context of the appeal scheme. Therefore, and with regard to the so called titled balance tests for the consideration of new housing development set out by paragraph 14, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
20. With this in mind, the proposed development would deliver two dwellings. Limited a difference though this would make to what is evidently a significant under supply on the Council's part, positive it should be viewed nonetheless. There would be some, equally limited, investment in the local building trade as well as adding to housing choice and mix locally. I see that the appellant has advanced that the scheme would seek to promote enhancements to bio diversity but I see this as a matter to mitigate impact rather than it being a benefit to the scheme.
21. The proposed development would yield some benefits and these would be limited. However, and as I have explained, it would not result in any further demonstrable planning harm over and above confliction with the development plan alone, the policies of which relevant to this scheme are not considered up to date in the above light. Thus, taking into account my findings, I accordingly ascribe them reduced weight. Consequently, the impacts of granting a planning permission would not, in this particular case, significantly and demonstrably outweigh the benefits. The appeal scheme would therefore be sustainable development for which the presumption in favour set out by the Framework applies.

## Other Matters

22. The appeal site is within flood zone 3a as defined by the Environment Agency. In terms of the assertions of the Framework in this regard, development should be steered away from areas at the highest risk of flooding through the application of the sequential test<sup>6</sup>. In this case, a substantial proportion of the District, and indeed the entirety of Butterwick, is within a flood zone. To direct all new development away from it would therefore render much of the district undevelopable. Not to mention how it would affect some of the district's larger settlements which are also in flood zones given Boston Borough's coastal location. In the application of the sequential test in this respect therefore, there has to be some pragmatism.
23. I note that neither the Council nor the Environment Agency (EA) have objected to the proposed development on flood risk grounds and taking into account my views I have no reason to disagree. A condition has been suggested by the Council which requires development to be carried out in accordance with the submitted flood risk assessment. The EA has agreed with this approach. Again, there is nothing significant before me that would lead me to a different view.
24. The Council have brought an appeal decision to my attention<sup>7</sup>. My colleague in this case dismissed the appeal for the erection of three dwellings, finding that the appeal site, and the proposed development, would not sit squarely with a sustainable approach. There are some similarities with the site and scheme I am considering here (a small number of dwellings and in the countryside). I note that a small range of services are in the settlements in proximity to the appeal site in the cited example but there is nothing further on what they are.
25. I do note my colleague's comment however that they are to the opposite end of the settlements in question, there is a footway but it is narrow and unlit. Consequently its use would be undesirable. I note also that my colleague found harm in respect of the character and appearance of the area given the relative open character of the site and surrounding development. These factors represent fundamental differences between it and the scheme I consider here. I am not persuaded therefore that there are sufficient similarities with the appeal site in the scheme before me such that it would lead me to a different conclusion. My findings therefore remain unchanged.
26. A number of issues have been raised by local residents. Chief among which relate to matters of living conditions. Since the proposed development seeks outline planning permission, detailed matters of design would be able to address the size, scale and location of any buildings, as well as the location of rooms and windows, in order that the effect in this regard can be minimised. Any scheme would in any event require further approval by the Council. There is comment regarding noise levels from the road but this is an existing situation and future occupants would be no worse affected than existing residents. In any case, the main road is largely quiet and carries a rural scale of traffic.
27. I also note concerns that have been expressed regarding visibility from the site due to the road conditions. Indeed, the Council's officers make reference to a

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<sup>6</sup> Paragraph 100 of the Framework

<sup>7</sup> Planning Inspectorate Ref APP/Z2505/W/17/3179256

substantial bend in the road in close proximity to the site which does reduce visibility. The County Council, as the Highways Authority, has not objected on highway safety grounds. I accept that the said bend would have a reducing effect on visibility but equally so it would have a reducing effect on the approach speed of vehicles. The future detailed reserved matters scheme could design an access that would maximise available visibility and indeed provide for parking within the site. I must also consider that as commercial premises, the appeal site already (or previously) has a number of vehicular comings and goings associated with it. I am of the view that two dwellings, and the movements associated therewith, would represent a slightly reduced level in this context. Taking all of this into account, I am satisfied that the proposed development would not impinge on the safe use of the highway.

28. I have not been provided with any compelling evidence in regard to roosting bats at the appeal site and whilst there appears to be some dispute over the location of a side boundary, this is a private civil matter and thus not one that can be used to withhold planning permission.

### **Conditions**

29. I have had regard to the list of conditions that have been suggested by the Council. I have attached the following for the reasons I have given, making some changes to wording in the interests of clarity and enforceability.
30. I have attached the standard conditions specifying the timescale for commencement of development and the submission and agreement of the matters that are reserved. I have also, in the interests of the proper functioning of the proposed development, imposed a condition setting out that works should be undertaken in accordance with the submitted flood risk assessment. Given the previous use of the site for vehicular repair and the use granted planning permission, it seems prudent to require further work to investigate the possibility of ground contamination. In order that this can be satisfactorily completed, details of any remedial action (as well as the survey work itself) would need to be undertaken and an approach agreed prior to the commencement of development. I have specified these matters accordingly.

### **Conclusion**

31. I have had regard to matters raised by third parties but it is for the reasons I have set out above, and subject to the conditions in the attached schedule, that the appeal is allowed and planning permission is granted

*John Morrison*

INSPECTOR



## SCHEDULE OF CONDITIONS

- 1) Details of the access, 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 approved Flood Risk Assessment completed by Origin Design Studio Ltd, dated February 2017 and incorporate the following measures:
  - Non habitable ground floors to proposed dwellings
  - Habitable uses on a finished floor level of 5.775m AOD
  - Building work constructed using flood resilient and resistant techniques
  - A minimum of two storeys to proposed dwellings
  - Mitigation measures shall be implemented in full prior to the occupation of each dwelling and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other periods as may be subsequently agreed, in writing, by the local planning authority
- 5) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
  - i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.
- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed

remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development [or relevant phase of development] is occupied.

- 7) 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 [or relevant phase of development] is resumed or continued.