



## Appeal Decision

Site visit made on 4 January 2023

by **J Downs BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

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**Appeal Ref: APP/Y2003/W/22/3306735**

**Land to the rear of Wrawby Hall Care Home, Vicarage Road, Wrawby, Brigg DN20 8RP**

- 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 Trust Care Ltd against the decision of North Lincolnshire Council.
  - The application Ref PA/2021/317, dated 22 February 2021, was refused by notice dated 1 April 2022.
  - The development proposed is erection of 4no. detached 4 bed dwellings with integral garages.
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### Decision

1. The appeal is allowed and planning permission is granted for Erection of 4no. detached 4 bed dwellings with integral garages at Land to the rear of Wrawby Hall Care Home, Vicarage Road, Wrawby, Brigg DN20 8RP in accordance with the terms of the application, Ref PA/2021/317, dated 22 February 2021, subject to the schedule of conditions at the end of this decision.

### Preliminary Matter

2. The appellant has referred to the emerging local plan as providing support for their case. There is no evidence before me as to the extent to which there are, if any, unresolved objections to the plan and its consistency with the National Planning Policy Framework (the Framework) insofar as would be relevant to this appeal. Therefore, in accordance with paragraph 48 of the Framework, this remains of limited weight despite the advanced stage of plan preparation.

### Main Issues

3. The main issues are:
  - whether the site is a suitable location for the development having regard to the local development strategy; and
  - the effect of the proposal on biodiversity.

### Reasons

#### *Suitable location*

4. North Lincolnshire Local Development Framework Core Strategy adopted June 2011 (CS) Policies CS3 and CS8 set out that development outside defined boundaries will be restricted to that which is essential to the functioning of the countryside. Market housing is not identified as such a use. North Lincolnshire Local Plan adopted May 2003 (LP) Saved Policy RD2 sets out that development

- in the open countryside will be strictly controlled. It specifies the types of development for which planning permission will be granted. This also does not include market housing. LP Saved Policy H5 provides that in lower tier settlements, development should be infill of up to three houses.
5. The appeal site is an area of overgrown open land on the edge of Wrawby, with access taken from Vicarage Road between the existing care home and a dwelling. It is common ground that the majority of the appeal site, other than a small area of the access, lies outside the development limit. It is bounded to two sides by the garden spaces of Wrawby Hall Care Home and the adjoining properties. While there is a further open space to the south, beyond it are further residential properties. The land to the west comprises agricultural fields.
  6. Due to this location outside the developed area of the settlement, with open land to two sides, development of the site would not constitute infill. It would also be for more than 3 dwellings.
  7. At the time the application was determined, there was an extant outline permission for the land to the west of the site for residential development. Reserved matters were approved in November 2022. I do not have full details of this permission. However, at the time of my site visit it did not appear that this permission had been implemented. This would be necessary for the proposal to comply with CS Policy CS3 which does allow for implemented planning consents to be taken into consideration when applying development limits.
  8. The emerging local plan has also been submitted for examination. This shows the site with the extant permission as a housing allocation and the development limit extended to encompass it and this site. However, this is not yet the adopted development plan, and I attach limited weight to it for the reasons set out previously.
  9. I therefore conclude that the appeal site would not be a suitable location for development having regard to the local development strategy. It would be contrary to CS Policies CS3 and CS8 and LP Saved Policies RD2 and H5 which seek to direct development to established growth areas or to infill locations.
  10. While the Council has referred to LP Saved Policy DS1 in its reason for refusal, this appears to relate to the design of proposals, rather than their principle. As such, it is not directly relevant to this reason for refusal.

#### *Biodiversity*

11. CS Policy CS17 promotes effective stewardship of wildlife by ensuring development seeks to produce a net gain for biodiversity by designing in wildlife and ensuring any unavoidable impacts are appropriately mitigated for. It does not specify what would comprise a net gain or the metric to be used to assess this.
12. The application was accompanied by a Preliminary Ecological Appraisal and subsequently by a Construction Ecological Management Plan and Wildlife Enhancement Plan. It is not in dispute that the site has limited potential for protected species. The Council's evidence confirms that the distinctiveness of the habitats onsite is low to medium. However, the appeal proposal would result in these being replaced with habitats of lower distinctiveness.

13. The Wildlife Enhancement Plan submitted by the appellant sets out how this could be addressed in the appeal proposal. While this outlines measures that could be incorporated into the development to encourage biodiversity, it does not set out how the unavoidable impacts of the development (the reduction in the amount of habitat and the lower distinctiveness of the retained habitats) have been mitigated for or contain any metric by which it could be established that a net gain for biodiversity would be delivered.
14. Both parties have referred to an appeal decision<sup>1</sup> where the development plan also sought to achieve a measurable net gain in biodiversity wherever possible. However, the use of the DEFRA Biodiversity Impact Assessment Metric (the metric) was specifically required in defined circumstances which were materially different to the scheme before me. That decision therefore does not provide any support for the use of the DEFRA metric as it is not a requirement of CS Policy CS17. However, this does not negate the fact that there is no metric before me to determine if there would be a net gain for biodiversity were the Wildlife Enhancement Plan to be implemented.
15. I therefore conclude that the appeal proposal would not have an acceptable effect on biodiversity. It has not been demonstrated that a net gain for biodiversity would be produced, contrary to CS Policy CS17.

### **Other Matters**

16. At my site visit, I observed the brick garage immediately adjacent to the access and footpath, and the proximity of the access to the junction of Vicarage Road with Vicarage Avenue and Little Lane. However, there is acceptable visibility along Vicarage Road due to the verge at the access. This would also provide appropriate visibility along Vicarage Avenue and Little Lane. The access arrangement would be to serve a limited number of dwellings. I therefore did not observe anything at my site visit that would lead me to conclude that the development would have an unacceptable impact on highway safety.
17. The application was accompanied by a Heritage Statement and Archaeological Evaluation Report (the report). While there are no designated or above ground heritage assets that could be affected by the development, evidence from the Historic Environment Record revealed archaeological finds in the vicinity of the site. A scheme of trial trenching was undertaken and the report includes details of the findings and an assessment of their significance. I agree that the significance of the assets is derived from their archaeological interest and the potential to add to knowledge of land division and domestic occupation during the early to post medieval periods.
18. The report sets out that, based on the findings of the trial trenching, the archaeological remains are of local value and there is no need to amend the location of the proposed dwellings. It recommends there should be a watching brief during construction. I have no reason to disagree with this. The scale of any harm to the non-designated heritage asset is likely to be limited, as would the effect on its significance. On balance, the benefits of providing additional dwellings would outweigh this harm.

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<sup>1</sup> APP/Y0435/W/20/3251121 allowed 14 October 2020

19. There are further extant permissions for housing development within Wrawby. However national policy is to significantly boost the supply of housing and other permissions would not be a reason to dismiss this appeal.
20. The appeal proposal would deliver an additional four dwellings which would contribute to identified housing need. There would be the associated economic benefits arising from employment and spending during the construction stage, and then the spending of future occupiers of the proposed dwellings. While these benefits would be limited due to the small scale of the development, they would nonetheless be benefits.

### **Planning Balance**

21. The proposal conflicts with the policies for the spatial distribution of housing which seek to direct housing growth to higher tier settlements, accommodate development within defined settlement boundaries, and limit the types of development that are acceptable outside these boundaries. However, the weight I attach to this conflict is reduced by the presence of the extant permission near the site which, once implemented, could render the appeal proposal policy compliant. It is also contrary to CS Policy CS17 which seeks to deliver a net gain for biodiversity. However, given the low biodiversity value of the site at present and the submitted ecological enhancement plan which would support biodiversity during the occupation stage of the development, I attach limited weight to this conflict. Notwithstanding the limited weight I attach to these conflicts, the other matters I have identified above would not outweigh them. The appeal proposal would therefore be contrary to the development plan.
22. The Council has confirmed that it cannot demonstrate a five year supply of deliverable housing sites. It has not set out what it considers the shortfall to be, nor indicated how this shortfall will be addressed. Paragraph 11d of the National Planning Policy Framework (the Framework) is therefore engaged and the policies related to the delivery of housing are deemed to be out-of-date.
23. I have not been made aware that the proposed development would harm any areas or assets of particular importance, therefore paragraph 11(d)(i) of the Framework is not engaged.
24. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. The Framework seeks to significantly boost the supply of housing. The appeal proposal would contribute to this, immediately adjacent to an existing settlement. There would also be the associated economic benefits that would arise from the development. I attach moderate weight to these benefits. The Framework seeks to deliver net gains for biodiversity and while it has not been demonstrated that the appeal proposal would deliver this, the Wildlife Enhancement Plan would make provision for biodiversity within the completed development. This would also represent a benefit of the proposal, albeit of limited weight.
26. When assessed against the policies in the Framework, the adverse effects of the development would be limited and therefore would not significantly and

demonstrably outweigh the benefits. The appeal proposal therefore benefits from the presumption in favour of sustainable development.

27. The appeal proposal is contrary to the policies of the development plan. For the reasons given above, I have attached limited weight to those harms and there are no other material considerations which would weigh against the proposal.

### **Conditions**

28. The Council has suggested a number of conditions should the appeal be allowed. I have had regard to these in light of the tests set out in paragraph 56 of the Framework and have made amendments where required to ensure compliance with those tests. I have imposed the standard condition relating to approved plans in the interests of certainty.
29. It is reasonable and necessary for a condition to be imposed requiring surface and foul water drainage details to be approved. Such a scheme should ensure that surface water is managed within the site, therefore it is not necessary to impose additional conditions requiring this. The site is within Flood Zone 1 therefore it is not reasonable or necessary to require further flood risk information to be provided.
30. A condition to address any contamination discovered during development is considered reasonable and necessary given the comments in the Phase I Desk Top Audit for Contamination Risk that part of the site was not accessible and the recommendation that a watching brief be maintained during the top soil strip.
31. It is reasonable and necessary to ensure appropriate measures are in place to protect wildlife during the construction stage of the development and to require biodiversity enhancements to be provided during the occupation stage. I am satisfied with the details in the submitted information, and I therefore have replaced the suggested condition with one that secures compliance with it. However, the requirement to demonstrate net gain is not necessary given the lack of certainty in the plan as to how this should be assessed or the amount of net gain required.
32. It is reasonable to require details of boundary treatments to be approved to ensure appropriate living conditions for existing and future occupiers. However it is not reasonable to require their retention given the proposal is for dwellings. I have amended the condition accordingly.
33. For the reasons set out above, it is reasonable and necessary to require the development to be carried out in accordance with the recommendations of the Heritage Statement and Archaeological Evaluation Report. I have amended the suggested condition in the interests of precision.

### **Conclusion**

34. The proposed development conflicts with the development plan when read as a whole. For the reasons given above, I have attached limited weight to this conflict, and there are no other material considerations which would weigh against the proposal. The policies of the Framework are a material consideration which weigh strongly in support of the appeal as the adverse impacts would not significantly and demonstrably outweigh the benefits of the proposed development.

35. I therefore consider that in the specific circumstances of this case, the material considerations indicate that the decision should be taken other than in accordance with the development plan. Accordingly, the appeal should be allowed.

*J Downs*

INSPECTOR



### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: un-numbered Site Location Plan; Proposed Site ND.63 dwg no 2; Proposed Dwelling ND.63 dwg no 3; External Works - ND.63 dwg no 4; Site Sections - ND.63 dwg no 5; and Proposed Dwelling - ND.63 dwg no 6.
- 3) No development shall take place until a foul and surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The submitted scheme shall demonstrate that sustainable methods of surface water drainage have been fully considered, including through ground investigations and infiltration tests and that all surface water will be managed within the site. The development shall be carried out in accordance with the approved scheme which shall be operational prior to the first occupation of any of the dwellings hereby approved and thereafter retained.
- 4) If, during development, any odorous, discoloured or otherwise visually contaminated material is found to be present at the site then no further development shall be carried out until a written method statement detailing how this contamination shall be dealt with has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved written method statement.
- 5) The development hereby approved shall be carried out in accordance with the Construction Ecological Management Plan and Wildlife Enhancement Plan dated August 2021. The Species Management Prescriptions measures set out in section 6 shall be thereafter retained.
- 6) Prior to occupation of any of the dwellings hereby approved, details of the positions, design, materials and type of boundary treatments to be built/planted shall be submitted to and be agreed in writing by the local planning authority. The agreed boundary treatment shall be built/planted before the dwelling(s) it serves are first occupied.
- 7) The development shall be carried out in accordance with the Conclusion and Recommendations of the Heritage Statement and Archaeological Evaluation Report. A copy of any analysis, reporting, publication or archiving arising shall be deposited at North Lincolnshire's Historic Environment Record within six months of the date of completion of the groundworks stage of the development hereby approved.

**[ENDS]**