

Appeal Decision

Site visit made on 23 March 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 6 May 2016

Appeal Ref: APP/V2635/W/15/3138461

Land off Lynn Road and Hill Road, Ingoldisthorpe, Norfolk

- 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 Ben Marten against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 15/00854/OM, dated 2 June 2015, was refused by notice dated 3 September 2015.
 - The development proposed is residential development and the creation of a new public amenity area.
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Decision

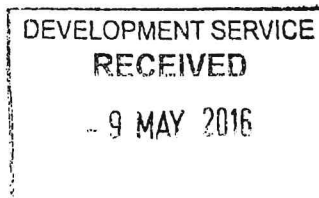
1. The appeal is allowed and outline planning permission is granted for residential development and the creation of a new public amenity area at land off Lynn Road and Hill Road, Ingoldisthorpe, Norfolk in accordance with the terms of the application, Ref 15/00854/OM, dated 2 June 2015, subject to the conditions in the Conditions Schedule below.

Procedural matters

2. This is an outline application with all matters but access reserved for later consideration (the Reserved Matters). I have therefore treated details in the submissions relating to appearance, landscaping, layout, and scale as being illustrative only.
3. No site address is given on the planning application form so I have used the address on the Planning Appeal Form.

Main Issues

4. The main issues in this case are
 - a) whether the proposal would detract unacceptably from the character and appearance of Ingoldisthorpe village;
 - b) whether there is a need for affordable housing contributions;
 - c) whether other harm would be caused and
 - d) if harm would be caused whether that harm would be outweighed by material considerations.



Policy

5. Although the Council identified some policies as being relevant in its submissions, none were cited in the reason for refusal, with reliance instead being placed on the *National Planning Policy Framework* (the Framework).
6. The development plan currently includes the saved policies from the *King's Lynn & West Norfolk Local Plan* (adopted 1998) and the Council's *Local Development Framework - Core Strategy* (adopted 2011). I discuss below the weight I afford to the relevant policies from those 2 documents.
7. I also received policies from the pre-submission version of the emerging *Site Allocations and Development Management Policies* (DMP). Whilst it is hoped this will be adopted soon, I cannot be confident that the policies would be adopted in the form before me. Therefore the weight afforded to these policies has not been significant. It nonetheless highlights the Council's intent.

Reasons

Character and appearance of Ingoldisthorpe

8. The village of Ingoldisthorpe broadly comprises 3 distinct areas of housing. What appears to be the largest of these is clustered by the junction of Hill Road and Lynn Road. The appeal site is next to this junction, and is now a grassed field that is used for grazing, though a pond is in its north-west corner. Modern bungalows back onto its east boundary, while housing is also to the north, looking over the site across Hill Road. To the west, on the opposite side of Lynn Road is a recreation ground, and open fields are to the south.
9. The illustrative layout shows the development as having 12 houses that would be along its eastern and southern boundaries, with the pond being retained in an area of public open space. An access road would curve through the site from Hill Road to Lynn Road between the front gardens of the houses and the open space.
10. The Appellant has said that these houses would be built to a design that reflected the traditional architecture of the surroundings. The appearance of the dwellings is not a matter before me but I have no reason to assume that, as part of a Reserved Matters application, the Council would not secure housing that was of a suitable design for this location. Moreover, while the layout is also a Reserved Matter, the Appellant has suggested conditions be imposed if the appeal is allowed limiting built development in the manner shown on the indicative layout, and requiring the provision of at least 50% of the site (which would include the area of the pond) as public open space. It is on that basis that I have assessed the appeal.
11. The precise mechanism for the maintenance of the public open space has not yet been established. However, I agree with the Council that this can be suitably addressed by a condition requiring its resolution before the development begins.
12. Starting with the principle of housing, Ingoldisthorpe is classified as a Rural Village in the settlement hierarchy in Core Strategy Policy CS02 and so it is accepted that there are services in the locality that can satisfy limited additional residential development. Reflecting this, in the DMP the Council is proposing to allocate a site for 10 houses further along Lynn Road.

13. Ingoldisthorpe itself only has certain services, but Snettisham and Dersingham lie immediately to the north and south. When taken together these 3 villages contain a wide and sufficient range of services and facilities, and, because of their closeness, it is reasonable to expect residents of one of the settlements to have easy access to and make use of services in another. While employment opportunities nearby are limited that could be said of much of rural Norfolk, and of itself it is not sufficient to render this location inappropriate.
14. It was contended that, given the allocation of 10 dwellings elsewhere in Ingoldisthorpe this additional housing was not needed in the village. However, as the Government is seeking to boost the provision of housing the allocations should not be viewed as a maximum and this is reflected in Core Strategy Policy CS09. Therefore, exceeding those allocations does not necessarily constitute a reason for resisting a development. Indeed, this appears to be accepted by the Council as it has now resolved to grant outline planning permission for 15 dwellings (rather than just 10) on the allocated site.
15. Therefore, I raise no objections to the principle of further housing in the village.
16. Moving on to the more specific concerns about the effect on character and appearance, the Council and the local residents broadly contended that this field was the historic centre of Ingoldisthorpe and the equivalent to a village green. It was therefore a heritage asset that, particularly because of its prominence, its openness, its pastoral nature and its pond, plays an important part in defining the character and identity of the village and helps to create a sense of place.
17. The site is in the countryside, and it is not in the settlement boundary as that runs along its eastern and northern sides. Moreover, in Local Plan Policy 4/20 it is defined as an important undeveloped spacious area and so development will not be permitted there. I assume this is because of its prominence at the centre of the village.
18. However, the site has no specific designation as a village green, and it is not allocated as public open space in the emerging development plan. There is also no public access to the land, and apart from school visits I was not told that public access had been allowed in the past. Indeed the Council accepted the site does not now provide formal outdoor recreation space. Therefore, any role the site plays, or is perceived to play, as a village green must be as a consequence of its visual impact.
19. Moreover, I consider the site cannot be defined as a non-designated heritage asset in this regard. This is because I have no indication that it has been deliberately undeveloped over the years or served any specific purpose beyond that of agriculture, and while it has almost certainly been used for farming for a long time that could apply to many fields in rural England. Although it was said that the land to the south had been laid out by Capability Brown I was not told that the current appearance of the appeal site was in any way due to his work.
20. Furthermore, in the light of the Appellant's case, not only is the pond to remain but it would be open to public access and, along with the surrounding land, it would be subject to a maintenance regime. The scheme would therefore enhance and secure the site's role into the future. While its spacious context would be reduced by the new housing, in my opinion there would still be a sufficient sense of openness to mean a suitable setting for the pond would

remain and so any role it has as a focal point for Ingoldisthorpe would continue. The Council noted that improvements to the pond could be undertaken without this scheme. While that may be so, realistically such works would be unlikely if its use for grazing were to be maintained.

21. In assessing this matter, I accept that building on this land would be in conflict with Policy 4/20. However, I share the Appellant's view that by securing the pond and public access the scheme would be contributing to the opening aim of that policy as it would be, in part, protecting an undeveloped and spacious area that the local residents consider to be important and contributes to the character of the village. It would also be resulting in a higher standard of provision, albeit in a smaller area. The Council contended no compensatory open space had been offered. However, if the role of the site in the village is as stated by the Council it is difficult to see how another site would achieve the same ends. In any event, I consider that improving the smaller portion to be retained can be seen to offset the loss of parts of the field to housing.
22. The site was considered but not selected when preparing the recent *Preferred Options for a Detailed Policies and Sites Plan*. I have no knowledge though of the type of development upon which that decision was made, and yet my findings in this case are very much dependent on the specific proposal being offered by the Appellant. The omission from that document does not therefore lead me to different findings. Indeed I note that the reasons for omitting the site were drainage concerns and concerns about the adverse impact on visual amenity because it is highly visible, and did not mention the loss of something akin to a village green.
23. Noting the submissions from local residents I do not doubt that to many this site plays a role in defining the identity of Ingoldisthorpe. On balance though, and mindful that the scheme intends to retain the pond and some of the area around for public access, its effect in this regard would not be sufficient to harm adversely the character, appearance or identity of the village.
24. Moving on to wider issues relating to the effect on the settlement, the site is not prominent in longer views. If approaching from the south it is substantially concealed by a tree belt, while coming from the north it is hidden by dwellings abutting Lynn Road. In both cases, when it becomes apparent it is seen very much in the context of the suburban bungalows to the east and (when looking from the south) the dwellings on Hill Road. Therefore, given the varied built development around, new dwellings here in the form suggested need not be unduly intrusive or discordant.
25. From the playing fields and the footpath to the west, an awareness of the openness of the site is restricted because of the wall on the playing fields' boundary to Lynn Road, so any effect resulting from a loss of that openness would be limited. Rather, the new housing would be seen against the dwellings and bungalows on the east side of the appeal site. From the roads to the east modern housing obscure views, and again when it would be apparent the development would be in a village context. Indeed, currently the various additions and fences behind the houses on the west side of Ingoldale give the site's eastern boundary a disjointed appearance and so in this regard the proposal could create a more coherent façade when looking from Lynn Road.
26. The effect of the development on the wider countryside would be limited, as the tree belt to the south would do much to screen the scheme. Again from

where it could be seen it would be in the context of the housing behind, and so would not be discordant

27. Accordingly I conclude that by building on this site there would be a conflict with Local Plan Policy 4/20, but otherwise the development would not adversely affect the character or appearance of Ingoldisthorpe and so in that regard it would not conflict with Core Strategy Policy CS06

Affordable Housing contributions

28. Based on the Appellant's submissions there is a need for affordable housing contributions with this development. In my opinion the provision of affordable housing plays an important role in ensuring a wide choice of homes in settlements such as this. I have no basis to consider that such contributions would not accord with the requirements of Regulation 122 in the *Community Infrastructure Levy Regulations 2010* or the relevant tests in the Framework.
29. The Appellant has indicated that 2 of the 12 dwellings on the illustrative layout would be affordable housing, and in the Officer Report it states that would be in accordance with the Council's requirements. I am mindful though that the number of units in the scheme is not before me and so it cannot be said at this stage whether or not 2 affordable houses would be policy-compliant.
30. Moreover, the condition suggested by the Appellant says that the affordable housing shall account for '*not less than 20% provision of housing units*', which does not sit comfortably with the offer and acceptance of 2 of the 12 houses (16.6%) for that purpose. However, as the Council has accepted 2 affordable houses I am nonetheless confident that such points can be resolved at the Reserved Matters stage.
31. No legal agreement to secure the provision of such accommodation has been submitted, and the absence of such has not been a reason for refusing the scheme. The Appellant has indicated a willingness for the matter to be addressed by condition, and this has been accepted by the Council.
32. There is nothing before me to show whether the level of affordable housing provision would be viable. However, it is a greenfield site and all matters but access are reserved. Given this, it is reasonable to assume there will be opportunity to secure a suitable level of provision and so such a condition would be appropriate.
33. I therefore conclude the development would not exacerbate any provision in the shortfall of affordable housing in the Borough, and so would not conflict in this regard with Policy CS09 in the Core Strategy or the Framework.

Whether other harm is caused

Highway safety

34. Visibility would be suitable from both of the proposed accesses to ensure drivers could enter and leave the site in safety. Although I accept that cars are often parked on the north side of Hill Road that situation would remain irrespective of this case. To my mind those vehicles would not impede the sight splays for drivers wishing to leave the site. Moreover, the number of extra traffic movements would not have an appreciable effect on the safety of Hill Road or the Lynn Road /Hill Road junction. While the Lynn Road access

would be close to a bus stop buses would be there only intermittently and there would be sufficient separation to ensure no harm to visibility.

35. Opportunity would exist when considering the Reserved Matters to design the road through the development in a manner that would ensure cars travelled slowly, thereby limiting its appeal as a 'rat run' and safeguarding any children going to or from the open space. The nature and extent of the proposed open space means most of its users would walk there from houses in the village and so parking would not be an issue.
36. Accordingly I conclude the development would not have an adverse effect on highway safety.

Ecology

37. The Council did not resist the proposal because of its impact on ecology, and the Norfolk Wildlife Trust raised no objections. Local residents referred to numerous animals, birds, reptiles and amphibians that have been seen on the field. This though is not surprising due to its rural location and the presence of the pond.
38. Whilst the site provides a breeding habitat for oystercatchers, there is opportunity to establish new breeding habitat on land owned by the Appellant to the south and that could be required by condition. Clearly affecting birds in this way always involves some risk. However, to my mind given the nature and extent of that land there is a reasonable and sufficient opportunity for the oystercatchers to become established there.
39. No evidence of Great Crested Newts was found on the site. There were also no identified bat roosts though lighting could be addressed by a condition to ensure any impact on bats using the area for foraging would be limited. No harm to other protected species was highlighted.
40. Therefore, I find that the impact of the scheme in relation to this issue would be acceptable.

Living conditions

41. The proposed dwellings would be behind the bungalows on Ingoldale. However, those properties have relatively long back gardens and, as siting is yet to be agreed, opportunity would exist to ensure no unreasonable level of overlooking or overdominance resulted from the scheme.
42. The houses on the north side of Hill Road would be sufficiently far away to mean overlooking should not be an issue, but again points of detail could be addressed at the Reserved Matters stage. A dwelling on the south side of Hill Road would be next to the site, and that has a large window looking over the land. However the room served by that window also appears to have another facing down the property's garden and so again any effect on living conditions of those residents would not be unacceptable.
43. The open view enjoyed by the occupiers of those properties would be lost or reduced, but that in itself is not a reason to refuse planning permission.
44. Accordingly I conclude the development need not unreasonably affect the living conditions of adjacent residents.

Other concerns

45. Based on the evidence before me I am not in a position to resist the scheme because of flooding, poor drainage, the inadequacy of the sewers and possible subsidence. I also have insufficient information to show the development would place an unacceptable strain on local services and infrastructure.
46. The motives of the developer and how the land was acquired carry no weight in my decision-making process.
47. It was said the scheme would harm tourism. However, the pond would remain and indeed would be a more accessible and better maintained feature, and so that is not a view I share.

Conclusions on this issue

48. I therefore find that other harm would not be caused.

Other considerations to weigh against the harm

49. Therefore I have found a conflict with Local Plan Policy 4/20 as it would be building where that policy says development would be prohibited. However, section 38(6) of the *Planning and Compulsory Purchase Act 2004* states that proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. I have also noted paragraph 14 of the Framework that say if a development plan is out-of-date development proposals should be approved without delay unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
50. Although Local Plan Policy 4/20 is part of the development plan, I understand that in the DMP no similar designation or approach is found. Rather, in that emerging document reliance is to be placed in this regard on Policy DM22, which is more general in its wording. To my mind this constitutes a material consideration that strongly weighs against Local Plan Policy 4/20. Furthermore, as stated above I consider the proposal would not be conflicting with the entirety of this policy, as it would be in line with its opening aims.
51. The Appellant also contended that the Council did not have a 5 year supply of deliverable housing sites, citing figures that date from 2014 claiming there was then a supply of 1.91 years. The Council accepted it did not have a 5 year supply, but it did not state the size of its shortfall. However, it added that at a Planning Inquiry in May 2016 it is intending to submit evidence to show a 5 year supply can now be achieved.
52. I do not have the evidence before me for the May Inquiry and in any event I cannot be certain that Inquiry will find a 5 year supply now exists. Therefore, I consider there is a shortfall in the supply of housing land. Concerning its scale, the Appellant's figure is of some age and so the actual situation will almost certainly have changed. However, the fact that the Council can confidently contend the provision has been achieved implies, at the least, that it has taken some steps towards addressing the matter. Therefore, at this stage it is reasonable to assume the shortfall is still of note albeit not as great as the 1.91 years identified by the Appellant.

53. Paragraph 49 in the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the Local Planning Authority cannot demonstrate a 5 year supply of deliverable housing sites. Given this, Local Plan Policy 4/20 and Core Strategy Policy CS02 are out-of-date, and therefore, under paragraph 14 of the Framework referred to above, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This does not mean that the out-of-date policies are given no weight, but rather that their weight is reduced.
54. Balanced against the conflict with Local Plan Policy 4/20, the scheme would have social benefits as it would be providing 12 houses or so, including some that were affordable, in a Borough with an acknowledged shortfall in both. There would also be economic benefits for Ingoldisthorpe as well as for Snettisham and Dersingham, resulting not only from the construction phase but also from the spending of future occupiers. As a result, in line with paragraphs 28 and 55 in the Framework it would assist in safeguarding local services and community facilities in this group of villages. Finally, there would be environmental benefits stemming from the improved management of the pond and the provision of public access.
55. Although a play area is also proposed given its proximity to the recreation ground I am not satisfied that its value should be attributed a significant amount of weight, though it too would be of some benefit.
56. On balance, given that the Council does not proposed to carry through Local Plan Policy 4/20 into the DMP, I therefore consider the benefits this scheme would bring would not be significantly and demonstrably outweighed by the harm resulting from a conflict with that policy.
57. In coming to this view I accept that many in the village objected to the works. While I have carefully noted the nature and range of their comments and have treated them as a material consideration, the number of objections in itself cannot be a determining factor when assessing an appeal. Rather, their content has to be weighed in the balance with all other relevant planning considerations.
- Conditions**
58. Various conditions have been suggested by the main parties, which I have considered in the light of relevant Government advice and guidance.
59. The standard conditions relating to outline permissions and the submission of the Reserved Matters should be imposed. I share the Council's view that a condition requiring the development to accord with the principles of the Design and Access Statement would be imprecise in this instance, though clearly it would be open for the Council to draw upon that document in its consideration of the Reserved Matters submissions.
60. In the interests of highway safety accesses and sight splays should be provided prior to first occupation and retained. I note the Council has suggested a condition that requires the sight splays to be kept clear of any obstruction greater than 0.225m in height above the carriageway. To my mind though that is unnecessarily and unreasonably low and a greater height of 0.6m would be acceptable.

61. I have no basis to consider the provision of a footway along the Lynn Road and Hill Road frontages is necessary because of this development, or that it is necessary to impose a planning condition to require parking provision during the construction phase. Moreover, I expect the precise line of the internal roads and their details would be subject to the Reserved Matters submissions as they would form part of the layout.
62. Given my findings in relation to the benefits of the scheme, the open space should cover not less than 50% of the site, although I accept that figure should include the area of the pond as well. Given the importance of that in my considerations, the precise manner in which it is to be created, maintained and managed should be clarified before development commences.
63. The mechanism for delivering and maintaining affordable housing should be also agreed before development begins as that could have a fundamental effect upon the design and layout proposed. Given my comments about the 20% provision I have left the precise numbers of affordable houses to be agreed. In the interests of suitable drainage the drainage details should be agreed, and those too should be before the commencement of works due to the effect they could have on the layout.
64. With regard to ecology, the Council has suggested compliance with the submitted Ecological Appraisal, but again that is too vague to be an enforceable condition. Rather, the precise mitigation measures, including those associated with bats and oystercatchers should be agreed. At this stage tree protection measures are not necessary, as they could be required under the Reserved Matters once the layout is known.
65. Finally, I have no basis to consider the archaeology conditions are not justified. Details of this need to be agreed before work starts to avoid any possible damage. However whilst a timetable is necessary I see no reason for the archaeological assessment, analysis, publication and so on to be completed before the development begins.

Conclusions

66. Accordingly, although I accept that the housing would be on a site where development is prohibited under Policy 4/20 in the Local Plan, I find that other material considerations outweigh this harm and it has not been shown that the adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits of the scheme. Therefore the appeal is allowed.

J P Sargent

INSPECTOR

Conditions Schedule

- 1) Details of the appearance, landscaping, layout, and scale, (the Reserved Matters) shall be submitted to and approved in writing by the Local Planning Authority before any development begins 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 3 years from the date of this permission.
- 3) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the Reserved Matters to be approved.

Open space and Ecology

- 4) The development shall not begin until ecological measures in line with those recommended in the Ecological Appraisal prepared by QUANTS Environmental Limited (together with a timetable for their implementation) have been submitted to and approved in writing by the Local Planning Authority. These measures shall include, among other things, details of lighting arrangements so as not to cause undue disturbance to bats, and measures within the area lined red on the plan entitled '*Ecological Mitigation and Enhancement Plan*' (submitted with the Appellant's letter to the Planning Inspectorate of 29 March 2016) to provide replacement breeding habitat for oystercatchers. The approved measures shall then be installed and/or implemented in accordance with the approved timetable.
- 5) The public open space (including the pond area but excluding any roads, parking areas or private gardens) shall account for not less than 50% of the total site area.
- 6) The development shall not begin until details of the creation, management and maintenance of the public open space (including the pond) have been submitted to and approved in writing by the Local Planning Authority. The open space (including the pond) shall then be laid out, managed and maintained in accordance with the approved details.

Affordable Housing

- 7) The development shall not begin until a scheme for the provision of affordable housing has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include (i) the numbers, type, tenure and location of the affordable housing, (ii) the timing of the construction of the affordable housing, (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing, (iv) the arrangements to ensure that such provision comprises affordable housing for first and subsequent occupiers, and (v) the occupancy criteria. The affordable housing shall then be provided and maintained in accordance with the approved scheme.

Drainage

- 8) The development shall not begin until drainage details (including a timetable for their implementation) have been submitted to and approved

in writing by the Local Planning Authority, and the drainage shall then be provided in accordance with the approved details and timetable.

Archaeology

- 9) The development shall not begin until details have been submitted to and approved in writing by the Local Planning Authority of a Written Scheme of Investigation for a programme of archaeological works. This shall include a timetable for its implementation, a timetable for the completion of the site investigation and post investigation assessment, and a timetable for the analysis, publication and dissemination of the results and the archive deposition. The approved scheme shall then be implemented, the site investigation and post investigation assessment shall then be completed, and the analysis, publication and dissemination of the results and their archive deposition shall then be undertaken in accordance with the approved timetable(s).

Highways

- 10) No dwelling shall be occupied until both vehicular accesses have been constructed in accordance with the approved plans.
- 11) No dwelling shall be occupied until a visibility splay of 2.4m by 43m has been provided to each side of the access to Hill Road, and until a visibility splay of 2.4m by 59m has been provided to each side of the access to Lynn Road, and those splays shall thereafter be kept free of any obstruction greater than 0.6m in height above the adjacent carriageway.