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## Appeal Decision

Site visit made on 28 October 2013

**by Grahame Gould BA MPhil MRTPI**

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

**Decision date: 30 October 2013**

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**Appeal Ref: APP/V2635/A/13/2196261**

**Church Meadow Farm, 9 Lynn Road, Wiggshall St. Mary Magdalen,  
Kings Lynn, Norfolk PE34 3AZ**

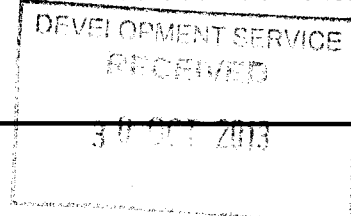
- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr DD and Mrs CC Russell against the decision of King's Lynn and West Norfolk Borough Council.
  - The application Ref 12/01792/EXO, dated 30 October 2012, was refused by notice dated 14 March 2013.
  - The development proposed is outline application – construction of 2 residential dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of 2 residential dwellings at Church Meadow Farm, 9 Lynn Road, Wiggshall St. Mary Magdalen, Kings Lynn PE34 3AZ, in accordance with the terms of the application Ref 12/01792/EXO, dated 30 October 2012 and the associated reserved matters application, Ref 13/00106/RM, subject to the conditions set out in the attached schedule.

### Procedural Matters and Background

2. The application subject to this appeal seeks to extend the life of an outline planning permission (09/02093/O) granted on 1 February 2010. The procedure to extend the life of permissions was introduced in October 2009, and further amended in October 2012, to make it easier for applicants to keep planning permissions alive during the economic downturn. The reserved matters approved on 28 March 2013 now also form part of the original permission. The application subject of this appeal is valid as both the original permission was granted before 1 October 2010 and it was submitted before the expiry of the three year time limit for the submission of reserved matters.
3. The appeal site comprises a now disused haulage yard, which is in part occupied by Church Meadow Farmhouse, a detached two storey house with rear garden area to the south, and a boiler house/workshop building. The site is at the northern extremity of Wiggshall St. Mary Magdalen and is on the western side of Lynn Road. The 'open fronted lorry shed' shown on the drawings accompanying the original outline application has been demolished.



4. The area to the north and west of the appeal site is characterised by arable farmland, while to the east and south there is housing consisting of a mixture of houses and bungalows.
5. The outline permission gave consent for the construction of two dwellings, one to the north and one to the south of the former farmhouse and included the demolition of the two other buildings within the yard, the reorganisation of the farmhouse's garden area and alterations to the site's access arrangements.

### **Main Issues**

5. Having regard to the Government's advice on the procedure for extending the life of permissions, the main issue is whether the proposal remains acceptable taking into account any significant changes in national and development plan policies and other material considerations since the original grant of planning permission.

### **Reasons**

6. This case is somewhat unusual in that both national policy and the development plan have changed since the granting of the outline permission. The National Planning Policy Framework (the Framework) was published in March 2012 and has replaced all previous national policy relevant to this case. With respect to the Development Plan, The King's Lynn and West Norfolk Borough Council Local Development Framework Core Strategy (the Core Strategy) was adopted in July 2011, while The East of England Regional Strategy was revoked on 3 January 2013 and therefore no longer forms part of the Development.
7. I must take the extant Development Plan as the starting point for the consideration of this appeal and Policy CS10 of the Core Strategy, is most relevant, given the Council's reason for refusal. It is an objective of Policy CS10, amongst other things, to secure the retention of employment premises unless it can be demonstrated that the continued use of a site: is no longer viable having regard to the site's characteristics, the quality of buildings and existing or potential demand; gives rise to unacceptable environmental or accessibility problems; or an alternative use or mix of uses offers greater potential benefits to the community in meeting local business and employment needs. The Council's reason for refusal states that the appellant has failed to demonstrate compliance with the aforementioned criteria from Policy CS10.
8. I understand from the appellant's case that when the haulage yard was granted planning permission in 1991, this permission was made the subject of a condition precluding the sale of the yard for business purposes and requiring its use to revert back to residential upon the ending of the haulage activity.
9. The fact that a restrictive permission was granted by the Council is indicative of it having reservations about the site's suitability for general commercial use, which is not surprising given the residential character of this part of the village and the narrow roads leading in and out of the village. The existence of a 7.5 tonne weight limit for HGVs travelling northward out of the village, is indicative of residents and the highway authority being concerned about the suitability of the local highway network to accommodate the very sort of

vehicles that might be expected to operate from the appeal site, given its essentially open yard character. Having driven along several of the roads leading to and from the village, I am unconvinced by the Council's contention that the roads not subject to the aforementioned weight restriction are any more suitable as routes to or from the 'A' road network.

10. The Council is concerned that the appellant has not marketed the site as commercial premises for sale, but I find it is difficult to see how the appellants could do this in a meaningful way, given the restrictive nature of the 1991 permission. This is because prospective purchasers would in all probability be deterred from acquiring or taking on a tenancy under such limitations upon occupancy. The nature of the 1991 permission also means that as things stand the site cannot be let or sold in parts and in this respect when the farmhouse and its garden area are taken into account, even if the terms of the 1991 permission were varied, the area available for a new commercial use would be something around 50% of the site's area and awkward in shape, factors which would be likely to limit interest from possible commercial occupiers.
11. The Council suggests that the appellants' business operated without apparent disturbance to other residents, although this is at odds with the appellant's explanation as to how the introduction of the highway weight limit arose. It is therefore unlikely that alternative occupiers could be found that would be able to operate in a similar manner to the appellants' business. I find the Council's argument unpersuasive because there can be no guarantee that a new occupier would not need to use the site more intensely to make it viable for their purposes. For this site to be able to make a meaningful contribution to employment in the local area, it is likely that it would have to be occupied more intensely, which would be likely to generate more activity on site and in terms of movements to and from it. In sustainability terms, I do not consider that this site would, for instance, be a suitable location for office accommodation because the employees of such a business would be likely to have to travel to and from work by car, given the site's comparatively remote location.
12. The approval of reserved matters following the refusal of the application subject to this appeal, is a material consideration which I cannot ignore, insofar as the 2010 outline permission is capable of being implemented.
13. Having regard to the foregoing assessment and the provisions of Policy CS10 of the Core Strategy, a policy which I find to be consistent with the provisions of the Framework, and the circumstances of this case particular case, I conclude that extending the life of the outline permission would not undermine the wider objectives of Policy CS10. This is because there is unlikely to be any significant demand from commercial occupiers to secure the appeal site's reuse and its contribution to employment generation would be likely to be comparatively modest, unless there was to be a significant intensification in the site's use, something which would be likely to create issues for the living conditions of the occupiers of adjoining properties or highway capacity in the area. On the basis of the information before me I therefore find that there are no grounds for withholding permission for the appeal proposal under the terms of Policy CS10.

### **Conditions**

14. I have considered the conditions imposed on the 2010 planning permission, together with those put forward by the Council in connection with this appeal, in line with the guidance contained within Circular 11/95 and have amended some of the wording for the sake of clarity. The appeal seeks permission for a three year period and I see no reason to depart from this standard time period. Apart from the standard conditions that accompany outline permissions, conditions are also necessary that address flood risk and resistance, possible contamination and highway and pedestrian safety. Conditions 1 and 2 of the 2009 permission duplicate one another and I have therefore only imposed the former. To avoid repetition I have combined the Council's suggested conditions 13 and 14.

### **Conclusion**

15. I conclude that the proposal remains acceptable taking into account the changes to national and development plan policy and other material considerations since the granting of the original outline permission. For the reasons given above I conclude that the appeal should be allowed.

*Grahame Gould*

INSPECTOR

### **Schedule – Conditions**

- 1) Details of the layout, scale, appearance and landscaping (hereinafter called "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 before the expiration of three years from the date of this permission.
- 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, whichever is the later.
- 4) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA), including the following mitigation measures detailed within the FRA:
  - Provision of a flood warning system. The occupants should sign onto the Environment Agency's Flood warning Service as recommended in the section 8.2 of the submitted FRA.

- Finished floor levels are to be set no lower than 1.3 metres above the surrounding ground level unless otherwise approved in writing by the Local Planning Authority.
  - No sleeping accommodation shall be located at ground floor level.
- 5) Prior to the commencement of any development, a scheme for the provision and implementation of Flood resilient/resistant construction methods up to a level of 3.6 metres AOD shall be submitted to and approved in writing by the Local Planning Authority . The scheme shall be implemented and completed in accordance with the approved plans and/or specifications at such time(s) as may be specified in the approved scheme and the works comprised within the scheme shall thereafter be retained for the duration of the development.
- 6) Prior to the commencement of groundworks, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on site. A report of findings for the aforementioned investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The report of findings shall include:
- a survey of the extent, scale and nature of contamination;
  - an assessment of the potential risks to: human health; property (existing or proposed); crops; livestock; pets; service lines and pipes; adjoining land; groundwaters and surfacewaters; and ecological systems.
  - an appraisal of remedial options and the proposals for the preferred option(s).
- 7) Prior to the commencement of the development, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved scheme. The scheme shall include all works, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 8) The approved remediation scheme must be implemented in accordance with its approved terms prior to the commencement of groundworks, other than those required to carry out the remediation, unless otherwise first agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks prior written notification of the commencement of the remediation scheme works.

Following the completion of the measures identified in the remediation scheme, a verification report that demonstrates the effectiveness of the

remediation carried out must be submitted to the Local Planning Authority and the dwellings hereby approved shall not be occupied until the Local Planning Authority has given its written approval to the verification report.

- 9) Prior to the first occupation of the development hereby permitted the vehicular accesses shall be constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 10) Any access gate or gates installed in connection with the development hereby permitted shall be hung to open inwards and be set back a minimum of 5 metres from the rear edge of the adjoining highway carriageway.
- 11) Prior to the first occupation of the development hereby permitted a 2.4 metre wide parallel visibility splay (as measured from the back edge of the adjacent highway carriageway) shall be provided across the whole width of the site's road frontage. The parallel visibility shall thereafter be retained free from any obstruction exceeding 0.225 metres above the level of the adjacent highway carriageway.
- 12) No development shall commence on site until a detailed scheme for the off-site highway improvement works (1.8 metre wide footway fronting the blue and red edged land as indicated on Drawing Number 08-71-05A) have been submitted to and approved in writing by the Local Planning Authority. The approved scheme of highway improvements shall be implemented in their entirety prior to the first occupation of the development hereby permitted.
- 13) Prior to the commencement of the development hereby permitted details for the provision of car parking and turning areas shall be submitted to and approved in writing by the Local Planning Authority. The approved parking and turning facilities shall be provided in their entirety prior to the first occupation of the development hereby permitted and shall thereafter be used for no purpose other than the parking or manoeuvring of vehicles.
- 14) Prior to the commencement of the development hereby approved the outbuildings shown on Drawing Number 08-71-04A shall be demolished and all materials associated with their demolition removed from the site.
- 15) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, heights, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details prior to the first occupation of the development hereby permitted and be retained thereafter.
- 16) The development hereby permitted shall be carried out in accordance with the following approved plans, Drawings 08-071-04A and 08-071-05A.