



Appeal Decision

Site visit made on 6 January 2026

by **R Gee BA (Hons) Dip TP PGCert UD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2026

Appeal Ref: APP/V2635/W/25/3375160

Land opposite Fair Field, School Road, St John's Fen End PE14 7SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Fitzpatrick against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 25/00400/O.
 - The development proposed is self-build plots.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is in outline form with all matters except for access reserved. A plan has been submitted which indicates how 5no. residential dwellings could be accommodated on the site.
3. As part of the appeal submission the appellant submitted revised indicative site layout plans¹. The Procedural Guide: Planning Appeals – England² advises that the appeal process should not be used to evolve a scheme, and that it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage. Notwithstanding that, in deciding whether to accept the revised plans I have had regard to the judgment of the High Court in *Holborn Studios*² (which refined the long-standing and well-understood “Wheatcroft principle”³), and whether any prejudice would occur.
4. In this case, although the changes are an attempt to address some parts of the reasons for refusal, given the plans are for indicative purposes only, in my view acceptance of the plans would neither alter the fundamental nature of the scheme nor introduce changes on which considerations of “natural justice” might suggest it necessary to fully re-consult interested parties.
5. I have therefore taken the layout of development shown in the submitted site plans into account as indicative only in relation to my consideration of the principle of the development on the appeal site.

¹Appendix 5 - PP1001 and PP1002

²*Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

³ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

Main Issues

6. The main issues are:
- i) whether the site is an appropriate location for housing, having regard to the spatial strategy of the development plan and character and appearance;
 - ii) whether a satisfactory access can be achieved; and
 - iii) whether the scheme is acceptable in respect of flood risk.

Reasons

Location

7. Policy LP01 of the Kings Lynn and West Norfolk Local Plan 2021-2024 (LP) sets out a spatial strategy and settlement hierarchy, which focuses the majority of development towards the settlements of Kings Lynn, Downham Market, Huntstanton and at the edge of Wisbech. This is to continue to support their roles as established large settlements reflecting their infrastructure to support growth.
8. The LP identifies a 6-tier settlement hierarchy, with Tier 1 being the most sustainable and at the bottom of the hierarchy, at Tier 6, are smaller villages and hamlets. Terrington St John is identified as a Tier 4 settlement (key rural service centres).
9. It is not disputed between the parties that the site lies outside of the Terrington St John development boundary, as defined by Policy 1: Village Development Boundary of the Terrington St John Neighbourhood Plan (NP). Whilst the site is not isolated⁴, its position outside of the settlement boundary brings the scheme into conflict with the Council's spatial strategy.
10. Policy LP02 of the LP supports the development of windfall sites for new residential development outside of, but adjoining development boundaries, where it meets a number of criteria. Amongst other things, this includes where it respects or enhances the character of the adjoining settlement and countryside and can be readily assimilated into the existing fabric of the adjoining built up area.
11. The settlement of Terrington St John is characterised by a nucleus of development to the north around the junction of School Road with Main Road and with linear development along School Road to the south. The western side of School Road comprises closely spaced dwellings, which are encompassed by the settlement boundary. This contrasts with the eastern side of the road which is characterised by fields and small clusters of sporadically spaced dwellings set in deep and wide plots.
12. The appeal site comprises a largely rectangular parcel of land located on the eastern side of School Road, set down from the highway. The appeal site is largely open in character and is an area of separation that creates a break between built development. The land is divided into paddocks by post and rail fencing. It is relatively flat and open, with the exception of some lightweight structures. A mature hedgerow lies along the site frontage, contributing positively to the site's verdant appearance.

⁴ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

13. The appellant advances that the proposal would be a form of infill development, noting residential properties either side of the site. To the north of the appeal site lies a single storey property, known as Peace Wood, set within a substantial plot that includes various outbuildings and structures. To the south is No 1 Gambles Terrace (No1), a two-storey property, which has an extensive front and side landscaped garden which places the dwelling some distance from the shared boundary with the appeal site.
14. Although not one of the exceptions listed in Policy LP02 of the LP, whether the proposal would comprise infill development is a question of planning judgement based on an assessment of the site and its surroundings. I consider that infill development is normally associated with the completion of an otherwise substantially built-up frontage. Whilst it is not disputed that the appeal site is flanked by built form, the appeal site comprises a wide, open gap between the two properties, interspersed with areas of mature vegetation. There are notable gaps between properties located on the eastern side of School Road and consequently, the proposal would not consolidate an otherwise substantially built-up frontage.
15. The appellant has submitted revised indicative plans⁵ to provide a series of alternative schemes in demonstrating how the dwellings could be laid out across the site to reflect a looser and less regular arrangement of development. The appellant has indicated a willingness to accept a condition which commits the layout of the site to one of these revised plans. However, layout is reserved for subsequent approval and, therefore, not within the scope of matters to be determined at this application stage.
16. Even if the layout of development were to reflect a looser form of development, the introduction of built form would reduce the gap that exists between Peace Wood and No 1 and the sense of openness which positively contributes to the rural character and appearance of the area. Irrespective of the height, mass or external appearance of the proposed dwellings, development of the site would result in a suburban appearance that would be at odds with the loose pattern of development along the eastern side of School Road. This could not be resolved at reserved matters stage as it goes to the heart of this main issue.
17. Furthermore, whilst recognising that the layout plans are indicative in respect of layout, access is not a reserved matter and is therefore of relevance to this appeal. Three vehicular accesses are sought from School Road. This would inevitably result in the removal of sections of hedgerow which would diminish the verdant character and appearance of the site. Whilst landscaping could be secured at the reserved matters stage, to help soften the visual appearance of the development, protect residential amenity of future occupiers and provide ecological benefits, I am not satisfied that landscaping would overcome the harms identified.
18. The appellant refers to a recent development of 5no dwellings on the north of the appeal site. Although proximate to the appeal site the context of this site differs from the appeal before me as this lies on the western side of School Road where the built form is consolidated. Accordingly, the presence of this development does not lead me to a different conclusion on this appeal.
19. For the reasons stated above, I conclude that the proposal would be materially harmful in terms of character and appearance and therefore would not be suitably

⁵ PP1001 and PP1002, Appendix 5

located having regard to the spatial strategy of the development plan. Conflict therefore arises with Policies LP02 and LP21 of the LP and Policy 1 of the NP, as outlined above.

Access

20. A substantial ditch is present to the front of the site which has trees and bushes growing in and over it. In response to the Council's reason for refusal Land Registry details submitted indicates that the ditch lies within the ownership of the appellant.
21. The evidence indicates that the land required for the visibility splays is largely within the ownership of the appellant. Any deficit in respect of the access to serve Plot 1 would be marginal, and any shortfall would not be severe in terms of highway safety. Accordingly, I am satisfied, should I be minded to allow the appeal, that a planning condition could be imposed to secure the provision of visibility splays.
22. Subject to the imposition of a planning condition the proposal would secure an appropriate access to ensure compliance with Policies LP13 and LP21 of the LP insofar as these require the provision of a safe and convenient access for all.

Flood risk

23. It is not disputed between the parties that the appeal site lies within Flood Zone 3, as identified in the Strategic Flood Risk Assessment 2018 (SFRA) and a tidal hazard area, which could flood should the tidal defences be breached.
24. The SFRA seeks to guide planned growth and future developments away from areas of high flood risk, including the coastal area. The National Planning Policy Framework (the Framework), with supporting Planning Practice Guide (PPG) provides Government policy in respect of planning and flood risk, whereby inappropriate development in areas at risk of flooding should be avoided by directing development away from places at highest risk. This includes, where necessary, the applying of the sequential and exception tests to steer new development to areas with the lowest probability of flooding.
25. Based on the site-specific Flood Risk Assessment, the development meets part b) of the Exception Test, as the evidence indicates that development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and reducing flood risk overall. However, part a) must also be satisfied. This requires the development to provide wider sustainability benefits to the community that outweigh the flood risk.
26. Although not an exhaustive list, the PPG⁶ identifies that such benefits could include the re-use of suitable brownfield land as part of a local regeneration scheme, an overall reduction in flood risk to the wider community through flood risk management infrastructure, or the provision of multifunctional sustainable drainage systems. The implication of these examples is that they would positively impact a substantial number of people or make a substantial environmental difference. Accordingly, these examples do not apply to the appeal site.
27. Having regard to the conflict with the spatial strategy and the significant harm to the rural landscape it is not considered that the proposal would provide sustainability

⁶ Paragraph: 036 Reference ID: 7-036-20220825

benefits which would outweigh the flood risk. Therefore, part a) of the Exception Test is not met.

28. Concluding on this matter, the development is at risk of flooding, and this is not outweighed by any wider sustainability benefits to the community. This draws the proposal into conflict with Policies LP18 and LP25 of the LP and paragraph 179 of the Framework insofar as it seeks to steer new development away from areas as the highest risk of flooding.

Other Matters

29. The proposal would make a positive contribution to the borough's housing land supply, to which I give moderate weight. The development would make an effective use of land, for which the Framework provides general policy support of small and medium sites such as this.
30. The appellant indicates that the development would create low carbon energy efficient dwellings with the suggestion of agreement to a condition relating to an Energy Performance Certificate (EPC) rating of A or B. Whilst the aspiration to create low carbon dwellings is welcomed the proposal is at outline stage, and it would not be reasonable to impose such a condition at this stage, which, in any event, would be covered by other regimes. Nevertheless, considering the emphasis of the Framework on using natural resources prudently, minimising waste and pollution, and moving to a low carbon economy, it is not unusual for new dwellings to be designed to high environmental standards.
31. The appellant advances that the proposal would help sustain existing services, in compliance with Policies CS10 and CS13 of the Core Strategy, which seek to protect and enhance economic and community facilities. The development would give rise to some economic benefits during the construction phase and provide limited support to local services through additional consumer spending. Whilst these elements weigh in favour of the proposal, the benefits would be tempered due to the scale of the proposed development.
32. The appellant indicates the provision of a footpath extension and a traffic island, to help reduce speed in this location, reflecting the aspiration of the NP to reduce speed through the village. Whilst an extension to the footway would provide some public benefit in respect of the proposed traffic island limited information is before me. Nevertheless, this would be on third party land, and no mechanism is before me to secure such provision.
33. The proposal is presented as a self-build/custom build (SBCB) scheme. The appellant has drawn my attention to the Council's self-build action plan which refers to introducing a new policy which allows for small-scale development to take place outside of development boundaries. The Council acknowledge that it is currently unable to fulfil its duty to demonstrate a sufficient supply of SBCB housing in the Borough. The provision of SBCB dwellings therefore would be of benefit, weighing in favour of the scheme.
34. A legal agreement, under the provisions of S106 of the Town & Country Planning Act 1990, is likely to be the most appropriate method of ensuring that the development is self or custom build rather than market housing. Nevertheless, a condition has been suggested by the appellant, with my attention drawn to an

appeal decision⁷. Whilst noting that the Council do not contest the suggested condition I do not agree with that approach. Having regard to the PPG I am not satisfied that it is a satisfactory mechanism to adequately enforce as such. Consequently, I attribute very limited weight to the proposal as a SBCB. However, even if I had been satisfied that the SBCB requirement was adequately secured, given the scale of the proposal the benefits would be modest.

35. Having regard to the benefits advanced by the appellant I do not consider them to be of individual, or cumulative, benefit to represent wider sustainability benefits to outweigh the conflict in respect of flood risk.
36. My attention has been drawn to 4no self-build plots at a site within nearby Tinley St Lawrence⁸ with the appellant asserting that the same policy considerations of Policy LP02 apply and a planning balance in favour of the self-build. From the evidence before me, whilst there may be some similarities, unlike the appeal scheme, the proposal was considered to assimilate well into a cluster of existing houses. Furthermore, the information before me indicates that the site was in a different village and in area of lower flood risk than the appeal site before me. As such the site context differs substantially. In any event, I have determined the appeal on its own merits.
37. The appeal site falls within the zone of influence of a number of designated European habitat sites. The evidence indicates that, without mitigation, there could be potential significant effects on these sites from additional recreational pressure. Given my other concerns with the scheme and that this matter is not in dispute, I do not consider this further. Had I been minded to allow the appeal, further representations would have been required on this matter.

Planning Balance and Conclusion

38. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.
39. There is no dispute that the Council cannot demonstrate a sufficient supply of deliverable housing. Paragraph 11 d) of the Framework indicates that, where the requisite housing land supply cannot be demonstrated, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. In accordance with footnote 7 of the Framework, as I have found the scheme would be at risk of flooding, it is the case that the policies in of the Framework provide a strong reason for dismissing the appeal. As such, the proposal does not benefit from the presumption in favour of sustainable development.
40. I have concluded above that the proposal conflicts with the development plan, when taken as a whole. Other considerations do not indicate that permission should be granted contrary to the development plan. Therefore, the appeal is dismissed, and planning permission is refused.

R. Gee INSPECTOR

⁷ APP/F2415/W/22/3303898

⁸ 25/00276/O