Working in Partnership	**DEVELOPMENT MANAGEMENT** **APPEALS LIST – 18TH MARCH 2019**

APPLICATION NUMBER & SITE ADDRESS	APPEAL REFERENCE & STATUS	OFFICER & PROCEDURE
DM/0279/18/FUL The Nags Head 2 Caistor Road Laceby North East Lincolnshire DN37 7HX	AP/019/18 INPROG	Lauren Birkwood Written Representation
DM/0278/18/ADV The Nags Head 2 Caistor Road Laceby North East Lincolnshire DN37 7HX	AP/021/18 INPROG	Lauren Birkwood Written Representation
EN/1043/17 26 Flour Square Grimsby North East Lincolnshire	AP/022/18 INPROG	Sue Hallett Written Representation
DM/1167/16/FUL Land At Brigsley Road Waltham North East Lincolnshire	AP/001/19 INPROG	Richard Limmer Written Representation

DM/0997/18/FUL 15 Coltsfoot Drive Waltham Grimsby North East Lincolnshire DN37 0XL	AP/003/19 INPROG	Bethany Loring Fast Track

DM/0014/19/FULA 6 Scartho Road Grimsby North East Lincolnshire DN33 2AD	AP/004/19 INPROG	Bethany Loring Fast Track

DM/0646/18/FUL 2 Hilary Road Grimsby North East Lincolnshire DN33 2PN	AP/005/19 INPROG	Lauren Birkwood Written Representation

The Planning Inspectorate

Appeal Decision

Site visit made on 19 February 2019

by Darren Hendley BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2019

Appeal Ref: APP/B2002/W/18/3213320
Land at Hewitt's Circus, Hewitt's Avenue, New Waltham DN35 9QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Ming Yeung, YPG Developments Ltd against North East Lincolnshire Council.
- The application Ref DM/0971/17/FUL, is dated 13 October 2017.
- The development proposed was originally described as 'full planning permission for the development of 72 houses and 24 apartments with associated landscaping and works.'

Decision

1. The appeal is allowed and planning permission is granted for the development of 68 houses and 18 apartments with new access and associated landscaping and works at land at Hewitt's Circus, Hewitt's Avenue, New Waltham DN35 9QR in accordance with the terms of the application, Ref DM/0971/17/FUL, dated 13 October 2017, subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has submitted an appeal statement which sets out its objections. As this concerns the matters of dispute with the appellant, it forms the basis of the main issue in this case.

3. The name of the appellant on the planning appeal form differs from the applicant details on the planning application form. I am, however, satisfied that the named appellant has the authority in order for the appeal to proceed.

4. The description of development in the banner heading above is taken from the submitted application form. Revised plans were submitted during the course of the application and the description was amended so that it concerned a 'full planning permission for the development of 68 houses and 18 apartments with new access and associated landscaping and works in accordance with amended plans received 17th August 2018 showing drainage details (including pump station location and layout) and landscape details'. Accordingly, I have considered the appeal on this basis and this is reflected in the description in my decision paragraph, excluding the superfluous elements.

5. The planning application submission included a number of illustrative drawings. I have considered these drawings on an indicative basis only.

6. The appellant submitted a detailed rebuttal at the Final Comments stage, including various documents related to a road safety audit. These documents are relevant to my considerations. Accordingly, parties were given the opportunity to comment on these documents. Hence, there is no possible prejudice.

7. During the course of the appeal, an updated Revised National Planning Policy Framework (Framework) and the 2018 Housing Delivery Test results were published, which I have considered in my decision. In the interests of fairness, the appellant and the Council were given the opportunity to comment on these matters.

8. Lastly, the appellant also submitted a planning obligation under Section 106 of the Town and Country Planning Act 1990 (Section 106 Agreement) during the appeal. The Council was given the opportunity to comment on this document and so I have also considered it in my decision.

Main Issue

9. The main issue is the effect of the proposal on highway safety and the free flow of traffic.

Reasons

10. The appeal site comprises an area of unkempt land which has no current access onto the highway network. It is located between the A1098 Hewitt's Avenue and the A1031 Humberston Road. A shared foot/cycleway lies between Hewitt's Avenue and the site boundary. Hewitt's Circus, a 4-arm roundabout is found in close proximity to the site. Humberston Road also extends to the south of this roundabout and Taylor's Avenue is, in effect, a continuation of Hewitt's Avenue, on the far side of the roundabout.

11. On the opposite side of Hewitt's Avenue to the site is a retail park which contains a food superstore and other retail units, as well as a petrol filling station. A signalised T junction with filter lanes, together with a controlled pedestrian crossing, provides access. More broadly, the site is found on the edge of the Grimsby and Cleethorpes urban area. There are significant areas of housing in its vicinity and commercial areas, as well as adjoining agricultural land.

12. The site is allocated for housing under the North East Lincolnshire Local Plan 2013-2032 (2018) (LP), and it forms part of a major strategic allocation on Humberston Road. It already benefits from an extant planning permission[1] for 63 dwellings. The proposed access that would be formed off Hewitt's Avenue accords with the existing permission. It would consist of a left in and out arrangement and a right turn in lane. There would be no right turn out of the access.

13. In respect of the predicted traffic generation levels that are set out in the appellant's transport assessment, these would exceed the traffic thresholds of impact that I have been referred to, when the number of residential units that form part of the proposal are considered as a whole. It was also evident from my site visit that the road network in the vicinity of the site is heavily trafficked. This includes traffic associated with the nearby retail park.

[1] Council refs: DM/0059/15/OUT, DM/0890/18/REM.

14. However, whether or not this would result in an unacceptable impact on the operation of the local highway network also depends on the mitigation that is put forward. Improvements are proposed to both the Hewitt's Avenue and Humberston Road (north) arm of the roundabout that are forecast to mitigate the impacts caused by traffic generation, including at peak times when the increases would be most marked. In my view, these improvements would also benefit existing road users with the capacity that would be created, thereby having the potential to reduce queueing delays and the associated frustrations of drivers.

15. With the additional capacity that would be created at the roundabout, this would be unlikely to cause undue concerns arising from its use, in effect, as a U-turn, due to the absence of a right turn out of the access. As a consequence, the proposal would not result in unsafe manoeuvres to the detriment of highway safety and amenity.

16. The mitigation also includes improvements for pedestrians and cyclists in the vicinity of the site. In particular, the proposed signalised crossing point on Humberston Road would improve the safety of users attempting to cross this road, and a footway would also be provided to a bus stop on Humberston Road (south).

17. The mitigation would adequately address potential detrimental impacts on highway safety arising from the additional traffic generation. Whilst these measures also formed mitigation under the extant permission, the evidence before me does not lead me to believe that the traffic generation from the additional dwellings would tip the balance of acceptability against the proposal as regards the impact on the highway network.

18. In relation to the potential for the use of an alternative access, as I find the proposed access arrangement not to be unacceptable, I have not considered this matter further. The LP policies that I have been referred to in respect of the housing allocation, in any event, do not require the proposal to be accessed in a different way from what is before me as it would deliver the appropriate highway infrastructure for its needs.

19. I conclude that the proposal would not have an unacceptable effect on highway safety and the free flow of traffic. As such, it would comply with LP Policy 5 which states that all development proposals located within or outside of the defined boundaries will be considered with regard to suitability and sustainability, having regard to access and traffic generation, amongst other considerations.

20. The proposal would also comply with paragraphs 108 and 109 of the Framework concerning whether safe and suitable access to the site can be achieved for all users, and development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

21. The Section 106 Agreement relates to the provision of affordable housing and public open space, and financial contributions for highways improvements and education facilities. The Section 106 Agreement binds the owner to covenants with the Council.

22. The affordable housing provision would constitute 20% of the proposed units. This would be required in order for the proposal to comply with LP Policy 18. It would also accord with the Framework as regards the need to provide housing for different groups in the community, including those that require affordable housing, and with the expectation that it will be provided on site. The public open space provision relates to a plan concerning the management and maintenance of the proposed public open space in perpetuity. These matters meet the requirements of planning obligations in order for the proposal to gain permission. They meet the tests under the Framework.

23. The Community Infrastructure Levy (CIL) Regulations require that any planning obligation providing for contributions must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. These are the same tests as set out in the Framework. CIL also places limitations on the pooling of contributions.

24. A highway contribution of £20,000 would be secured towards the improvement works to the Hewitt's Circus. Such a contribution would mitigate the impact of the proposal with regard to highway safety and the proposal would be unlikely to be acceptable without it. It is reasonable for a contribution to be made to cover these costs, as it would be directly related to the development. I am satisfied this meets the tests of CIL and the Framework.

25. Education contributions would be made on the basis of £11,276.44 for every 4 qualifying houses for primary education and £16,991.48 for every 5 qualifying houses for secondary education. The monies would be spent, respectively, on schools within 2 and 5 miles of the site. This would address matters from the proposal with regard to the effect on education provision and, with the distances from the site, the monies would be spent on schools that children living on the site would be likely to attend. This would be required in order for the proposal to comply with LP Policy 6 in respect of its infrastructure requirements. It would also be directly related to the development and meets the tests of CIL and the Framework. I am also satisfied that it meets CIL pooling requirements.

26. The layout of the proposal would involve a mix of houses and a 3-storey block of apartments, together with an area of public open space. It would also include shared spaces, and a pedestrian and cycle access onto Humberston Road, as well as the internal roads and ancillary features. The amount and density of development proposed would be comfortably accommodated within the confines of the site and, with the variety in design of buildings that are found in the area, it would not appear out of place. The results of the Housing Delivery Test do not alter my conclusion.

27. I acknowledge that interested parties are concerned that the proposal would represent an increase in the number of dwellings on the site compared to the previous approval and that, regardless of my decision, the appellant would still have the option of implementing the extant permission. I am also aware of the concerns expressed that an appeal was lodged rather than seeking to address the reason for deferment at the Council's Planning Committee. Nevertheless, I have to determine the proposal on its merits.

Conditions

28. As well as the time limit condition (1), I have imposed a condition in the interests of certainty concerning the approved plans (2). The plans contained within the condition is based on the schedule that the appellant has provided as this is a more complete list of the plans that were before the Council, including the house types that are shown on the proposed site plan.

29. I have also imposed a condition to protect potential archaeological remains in the interests of conserving the historic environment (3). I have also imposed a condition concerning construction matters in the interests of protecting the living conditions of the nearest residents and for highway safety reasons (4). I have also applied a condition concerning highways matters, including those which relate to the proposed mitigation, also in the interests of highway safety and the free flow of traffic (5).

30. I have also imposed conditions to protect nesting birds in the interests of biodiversity (6); concerning matters related to character and appearance (7 and 13); to provide for satisfactory drainage in the interests of minimising flood risk (8); to encourage the use of sustainable modes of transport (9 and 12); to protect the living conditions of the future occupiers from noise (10); for the purposes of water efficiency (11); and in the interests of public health concerning land contamination (14).

31. I have applied pre-commencement conditions in respect of protecting archaeological remains (3), concerning construction (4) and highways matters (5) as these need to be agreed prior to development commencing, given the nature of these issues and the site circumstances. Hence, there is a clear justification.

32. The Council requested a condition regarding the broader enhancement measures that were highlighted in the submitted ecology report. However, as the report indicates that the habitat of the site is of low value and this has not been disputed, it would not be necessary. Moreover, full details of the hedgerows and tree species are already before me as part of the proposed landscaping details. As I have set out, I have though imposed a condition to protect nesting birds, and this was also recommended by the report. I also do not deem it necessary to require further landscaping details to be submitted but rather the implementation of what has already been provided.

33. Where I have altered the wording of the remaining conditions put forward by the Council I have done so in the interests of precision, limiting matters which need to be agreed pre-commencement and without changing their overall intention.

Conclusion

34. For the reasons set out above, the appeal should be allowed and planning permission be granted, subject to the conditions.

Darren Hendley

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: Proposed Site Plan 01-M; House Type Plans F & G (R09 + G), Q – WG (R20 – WG), R – WG (R21 – WG), A (R04), B (R05), C (R06), D (R07), E (R08), F (R09), G (R10a), I (R12a), J (R13a), K (R14a), L (R15a), M (R16a), N (R17a), O (R18a), P (R19), Q (R20), R (R21), S (R22), T (R23), R (R24), V (R25), X (R26); Apartment Plan 28 A; Landscaping Plans 114-LYR-XX-XX-DWG-L-1000 Rev 6 and 114-LYR-XX-XX-DWG-L-1001 Rev 1; Drainage Plan 115-00 2D; Pumping Station and Detached Garages Plan 30A.

3) No development shall take place until a written scheme of investigation or a specification for works for a programme of archaeological works has been submitted to and approved in writing by the local planning authority. No development shall take place other than in accordance with the approved details.

4) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
   i) the parking of vehicles of site operatives and visitors;
   ii) loading and unloading of plant and materials;
   iii) storage of plant and materials used in constructing the development;
   iv) wheel washing facilities;
   v) measures to control the emission of noise, vibration, dust and dirt during construction;
   vi) a traffic management plan, which shall include details of delivery schedules and how this will be managed to eliminate waiting on the public highway, and the number, types and size of vehicles during the construction period;
   vii) delivery, demolition and construction working hours; and
   viii) contact details of the person with responsibility for the implementation of the Construction Method Statement.

   The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

5) No development shall take place until the following highway details on plans to a scale of at least 1/500 have been submitted to and approved in writing by the local planning authority:
   i) the proposed layout of the carriageways and footways on the development;
   ii) the wearing course materials proposed for the carriageways and footways;
   iii) cross sections;
   iv) the highway drainage system;
   v) the proposed locations of street lighting columns, all services and ducts for services, within the carriageways and footways;

vi) final details on the off-site highway works in relation to the new footway and signalled crossing on Humberston Road and works on Hewitt's Avenue, including access to the site works as detailed in the Transport Assessment and shown on plan 001B by Vectio Consulting. Details shall also include lane priority changes on Hewitt's Avenue; and

vii) A Final Stage 1 and 2 Road Safety Audit (RSA) must be provided. The RSA shall take into consideration the proposed access on Hewitt's Avenue and the proposed signalised crossing on Humberston Road. The Road Safety Audit must be undertaken by a fully qualified independent Road Safety Auditor.

All works shall be carried out in accordance with the details approved and the off-site footway, and signalled crossing and access works shall be completed and be provided in accordance with the approved details prior to the occupation of any dwelling.

6) The clearance of the site shall only take place between the months of September and April (inclusive) unless a nesting bird survey has been submitted to and approved in writing by the local planning authority. The clearance of the site shall be carried out in accordance with these approved details.

7) No development of the dwellings hereby permitted shall take place until samples of the external roof and wall facing materials have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details prior to the occupation of the dwelling hereby permitted to which it relates and thereafter be maintained.

8) None of the dwellings hereby permitted shall be occupied until the drainage works shall have been completed in accordance with the approved plan 115-00 2 D and thereafter be maintained.

9) No development of the dwellings hereby permitted shall take place until a Final Travel Plan to provide additional measures to the Interim Travel Plan by Vectio Consultants has been submitted to and approved in writing by the local planning authority. The dwellings hereby permitted shall then be occupied in accordance with the measures approved.

10) No development of the dwellings hereby permitted shall take place until details of the soundproofing of the properties to follow the principles of the submitted noise report has been submitted to and approved in writing by the local planning authority. The soundproofing shall be installed in accordance with the details approved prior to the occupation of the dwelling hereby permitted to which it relates and shall be so retained thereafter.

11) No development of the dwellings hereby permitted shall take place until a scheme of how water will be reused and recycled on site has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the details approved prior to the occupation of the dwelling hereby permitted to which it relates and shall be so retained thereafter.

12) No development of the dwellings hereby permitted shall take place until a scheme to allow for the future inclusion of individual electric car charging

points for each property has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the details approved prior to the occupation of the dwelling hereby permitted to which it relates and shall be so retained thereafter.

13) The landscaping shall be completed in accordance with the approved details as shown on landscaping plans 114-LYR-XX-XX-DWG-L-1000 Rev 6 and 114-LYR-XX-XX-DWG-L-1001 Rev 1 and within 24 months of development commencing or within such longer period as may be first agreed in writing with the local planning authority by way of a phasing plan.

14) 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 is resumed or continued.