



# PLANNING APPEAL STATEMENT

on behalf of Mr D Jenkins

Proposed Outline planning permission for three dwellings (all matters reserved for subsequent approval)

at north of Habrough Lane, Kirmington, DN39 6YN

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Prepared by: LP

Edited and Amended by: SC

For and on behalf of Brown & Co - JHWalter.

Brown & Co is a leading provider of agency, professional and consultancy services across the whole range of rural, commercial, residential, and agricultural markets.

Date: August 2022

## 1. INTRODUCTION

1.1 This Planning Appeal Statement has been prepared by Brown & Co, on behalf of Mr D Jenkins [“the Appellant”] to support an appeal following the decision of North Lincolnshire Council [“the LPA”] to refuse the planning application reference PA/2021/1826 for ‘Outline planning permission to erect three dwellings (all matters reserved for subsequent consideration)’ on land north of Habrough Lane, Kirmington (see figure 1 below for location).

1.2 The application was refused on the following grounds:

1.

*‘The proposed development is contrary to policies RD2 of the North Lincolnshire Local Plan and CS2, CS3 and CS8 of the adopted Core Strategy in that the site is outside of a defined settlement boundary and is not for specific purposes associated with a rural location, which include agriculture, forestry or to meet a special need associated with the countryside.’*

2.

*‘The proposed development, by virtue of its location outside the defined settlement boundary for Kirmington and the scale of development proposed (three dwellings), is considered to have an urbanising effect on the southern edge of the settlement by introducing built form into the rural landscape, to the detriment of its open character and appearance. Therefore, the development is considered contrary to policies RD2, H5, and DS1 of the North Lincolnshire Local Plan and CS5 and CS8 of the North Lincolnshire Core Strategy.’*

1.3 The main issues for consideration are therefore:

- Whether or not the proposed development is in a suitable location, in the light of local and national policies for housing;
- The effect of the proposal on the character and appearance of the surrounding area;

1.4 Subsequent to the determination of the planning application it has been clarified that the LPA are not able to demonstrate a 5-year housing supply of deliverable land (see appeal decision issued on 20<sup>th</sup> July 2022, with respect to land at Brigg Road, Messingham, North Lincolnshire DN17 3QX (Appeal Ref.: APP/Y2003/W/21/3278257 Submitted as appendix 3), This issue then becomes a third but more important and overarching material consideration under which to consider the two main issues noted above and as such a third main issue for consideration is:

- Whether the proposal can be considered to be sustainable development.

## **2. SITE & SURROUNDINGS**

- 2.1 The appeal site is a paddock which lies to the south eastern end of the village of Kirmington. The site is bounded by Limber Road to the west and Habrough Lane to the south. Skitter Beck runs along the northern boundary of the site, with residential properties (bungalows) to the north of the beck.
- 2.2 There is a line of trees and hedges along the southern boundary of the site and part of the western boundary, with arable land further south and east. There is a small industrial estate located approx 250m north of the application site, with the centre of the village (Marrowbone & Cleaver pub) being located just over a quarter of a mile away.

## **3. SITE HISTORY**

- 3.1 PA/2019/745 – Outline planning permission for nine dwellings (landscaping reserved for subsequent approval). Refused and dismissed at appeal.

## **4. PLANNING POLICY CONTEXT**

- 4.1 Planning law requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan is, therefore, the starting point for the assessment of all planning proposals. Development plan policies of particular relevance to this application are summarised below.
- 4.2 The development plan for the proposal area consists of the saved policies from the North Lincolnshire Local Plan (2003), the North Lincolnshire Core Strategy (2011) and the housing and Employment Land Allocations Development Plan Document (2016). An emerging North Lincolnshire Local Plan is at publication stage (2021) and as such its policies have limited weight.
- 4.3 The Government's planning policies, as set out in the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG), are also a significant material consideration in deciding planning applications. National planning policies of particular relevance to this application are summarised in paragraphs below.

### **Development Plan Policies**

- 4.4 The following policies from the North Lincolnshire Local Plan and Core Strategy are considered relevant to this proposal. It is however considered that some of these policies are out of date, which will be discussed further:

North Lincolnshire Local Plan:

- Policy RD2 – Development in the Open Countryside
- Policy H5 – New Housing Development
- Policy H8 – Housing Design and Housing Mix
- Policy T2 – Access to Development
- Policy T19 – Car Parking Provision and Standards
- Policy DS1 – General Requirements

North Lincolnshire Core Strategy:

- Policy CS1 – Spatial Strategy for North Lincolnshire
- Policy CS2 – Delivering More Sustainable Development
- Policy CS3 – Development Limits
- Policy CS5 – Delivering Quality Design in North Lincolnshire
- Policy CS7 – Overall Housing Provision
- Policy CS8 – Spatial Distribution of Housing Sites

### National Planning Policy Framework

- 4.5 The NPPF sets out the Government’s planning policies and how these are expected to be applied and advises that the purpose of the planning system is to contribute to the achievement of sustainable development. Three objectives of sustainable development are identified: economic, social, and environmental.
- 4.6 Economic considerations include ensuring that sufficient land of the right type is available in the right places and at the right time to support growth. Social considerations include supporting healthy communities by creating high quality environments with accessible local services. Environmental considerations include protecting and enhancing the natural, built, and historic environments.
- 4.7 The proposed development will provide local jobs during construction and will support the local economy through the new residents using local shops and services and spending money in the local area and by council tax income from the dwellings. The site currently has little biodiversity value, but the development will see the introduction of landscaping and biodiversity enhancements to benefit the natural environment without detracting from the character of the area.
- 4.8 At the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 11.c&d of the NPPF clarifies that the presumption in favour of sustainable development means that, *For decision-taking:*

*(c) approving developments that accord with the development plan without delay;*  
*or*

*(d) Where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting*

*planning permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

- 4.9 The approach outlined in 4.7 above includes (as stated in footnote 8 of the NPPF), applications involving the provision of housing, situations where the local planning authority cannot demonstrate a 5-year supply of deliverable housing.
- 4.10 The NPPF establishes a series of core planning principles which include that planning should proactively drive and support sustainable development to deliver new homes, business units, infrastructure and thriving local places. To this end, every effort should be made to identify and meet the housing, business, and other development needs of an area and to respond positively to wider opportunities for growth.

#### National Planning Practice Guidance

- 4.11 The NPPG as published on 27<sup>th</sup> March 2012 and most recently revised on 20<sup>th</sup> July 2021 sets out the government's planning policies for England and how these are expected to be applied.
- 4.12 The NPPG category *Housing supply and delivery* (22 July 2019) clarifies government guidance on establishing, demonstrating and assessing/challenging an LPA position with respect to the calculation of an LPA's published 5-Year supply. The submitted appeal referred to above (Appeal ref. 3278257) clarifies that the Inspector utilised the principles established in the NPPG and found that on the 20<sup>th</sup> July 2022, the actual housing supply of North Lincolnshire District Council was between 3.2 and 4.8 years. Falling short of the position proposed by the LPA and the required 5-Year supply.

## 5. GROUNDS OF APPEAL

- 5.1 This appeal arises out of the decision of North Lincolnshire Council to refuse the application ref PA/2021/1286 on the grounds that the site is outside of the development boundary and that the proposed development would have an urbanising effect on the southern edge of the settlement.
- 5.2 Policy CS8, whilst restricting housing outside development limits, contemplates some greenfield development as it refers to allowing development on such sites

where it can be demonstrated that this would bring additional community benefits, contribute to building sustainable communities and be acceptable in terms of its impact on the high quality environment and adjoining countryside.

- 5.3 This overall approach is supported by policy CS2 which sets out a sequential approach for development. Policy CS3 provides that development limits will be defined in future development plan documents. Outside these boundaries, development will be restricted to that which is essential to the functioning of the countryside. The development limits were subsequently defined in the Housing and Employment Land Allocations Plan, and whilst the application site is located outside the designated development limit for Kirmington it is immediately adjacent to it. The proposed development would fill in a gap between the dwellings at Ransom Court and Habrough Lane to the south. It is not considered that the development would significantly extend the built form of the settlement, to the detriment of the character of the area. The development would be seen against the backdrop of the existing development to the north of the application site when approaching the village and would not appear as development in the open countryside. It is interesting to note that the village of Kirmington is multcentred and has slowly developed over time in a linear fashion with frontage development similar to that proposed by the appellant, along its multiple roads.
- 5.4 Furthermore despite the development limits quoted in the Employment Allocations Plan, it is asserted that this limit appears to be based upon a value judgement utilising the existing development and a drainage ditch extending a local stream to facilitate site drainage of that development. This is not a natural topographical feature nor a solid human made boundary. It is instead asserted that the southern edge of the settlement should take into account the road to the west of the proposal known as East End and Harbrough Lane immediately south of the proposal. These roads define the southern limit of the settlement together with the additional urbanising feature of the streetlight lit footway extending along the western edge of the site along Limber Road, curving to the join Harbrough Lane. It is also noted that the proposal site is within the 30 mph limit of the village. It is asserted that these features more accurately define the edge of the settlement.
- 5.5 While the proposal site might not be supported by the development plan when taken as a whole, the absence of a 5-Year supply means that the locational policies can be considered to be out of date (see below for further comment on 5 year supply) and as such the southern boundary limits of the settlement can also be considered out-of-date. This is a major consideration as part of the planning balance.
- 5.6 Local plan saved policy RD2 restricts development in the open countryside other than in exceptional circumstances. This policy only supports residential development outside defined development limits where it is to meet an essential proven need and the open countryside is the only appropriate location for the

development. Whilst this policy remains, it has largely been overtaken by policies in subsequent plans addressing the same issue (such as policies CS2 and CS3 referenced above).

- 5.7 The NPPF establishes a series of core planning principles which include that planning should proactively drive and support sustainable development to deliver new homes, business units, infrastructure and thriving local places. To this end, every effort should be made to identify and meet the housing, business and other development needs of an area and to respond positively to wider opportunities for growth.
- 5.8 One of the key issues for this proposal is that of tilted balance. Paragraph 11 of the NPPF states:

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Looking at paragraph **d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:**

- **the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or**
- **any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.**

- 5.9 In the case of Paul Newman New Homes Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 15 dealt with the ‘triggers’

to get into the tilted balance. This included an argument about what constitutes a 'relevant' policy does not require it to be determinative. Another trigger for the tilted balance for housing schemes would be the absence of a five-year housing land supply, or that the most important policies are out of date.

- 5.10 In the case of North Lincolnshire Council, it is considered that the key policies against which this application was determined are the policies which relate to spatial strategy, spatial distribution of housing, development boundaries, and overall housing provision. These policies are considered to be out of date due to the lack of a 5-year housing supply as clarified in Appeal Decision Notice (Ref 3278257 dated 20<sup>th</sup> July 2022) submitted with this appeal and the planning history for applications determined by North Lincolnshire council between 2016 and 2021.

## 5 Year Housing Supply

- 5.11 Where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, relevant policies which guide the supply of housing should not be considered up to date. It has been confirmed, through an appeal submitted by Cyden Homes (Appeal ref: APP/Y2003/W/21/3278257, dated 20<sup>th</sup> July 2022) that North Lincolnshire Council does not currently have a five-year supply of deliverable housing sites, with the likely figure being between 3.2 and 4.8 years. The consequence of this shortfall is to demonstrate that current policies are failing to deliver a five-year supply of housing in accordance with the NPPF and they are, therefore, failing to meet short-term housing needs. As such it is considered that there is a clear and demonstrable need for housing development in the area and the relevant policies should be considered out of date.
- 5.12 As outlined in the NPPF, there is a presumption in favour of sustainable development and development proposals should be approved unless the adverse impacts significantly and demonstrably outweigh the benefits. The site is adjacent to the development boundary and close to facilities within the town. Recent appeal decisions have stated that such proximity to settlement boundaries, the absence of a five-year land supply and proximity to facilities would suggest that such small-scale development is sustainable. For these reasons it is not considered necessary for only essential development just outside of the development boundary of very sustainable settlements to be considered acceptable. Kirmington with its Church, Primary School, Public House and being only 1 mile from an International Airport is clearly a sustainable location. It is therefore asserted that it is not necessary, in policy terms, to look for other available sites within the development boundaries. In this instance, with the NPPF giving weight in favour of sustainable development, the planning balance suggests that this proposal is acceptable in principle.

## Planning History of Development granted outside development boundaries

- 5.13 An EIR request was made to North Lincs Council in February 2022 <sup>1</sup>. The data received clarifies that between 2016 and 2021 there were over 100 applications for residential development approved contrary to the locational elements of development plan with respect to being outside development boundaries. The majority of these permissions were approved when the Council could not demonstrate a five-year housing land supply (as is the case now<sup>2</sup>), within this time period over 1300 homes were approved outside of defined settlement boundaries, none of these on allocated sites. There are omissions within the provided data for other sites which are known to have planning permission approved and be outside of settlement boundaries, and several more applications (which total more than 110 dwellings) are awaiting an appeal decision. To put this number into perspective, the Council's five-year housing requirement for 2021-2026 is 2011 dwellings, in theory meaning around 70% of this requirement could be made up of sites which fall outside of development boundaries.
- 5.14 The document which makes up the five-year housing land supply statement (appendix 2) has been cross checked with the EIR information and 512 of the 2011 required houses which are set to be delivered within the 2021-2026 period are from permissions granted contrary to the development boundary policies of the Core Strategy. This equates to around 25% of the homes to be delivered within this time frame.
- 5.15 Due to this significant number of approvals and dwellings being permitted outside of the development boundaries and the fact that the LPA cannot demonstrate a 5 Year Housing Supply, it is considered that the relevant policies (including RD2, CS2, CS3 and CS8) are out of date. As the main policies are out of date, and that these 'relevant' policies should not be determinative, the remainder of the development plan as a whole and NPPF should be taken into consideration and the titled balance should be in favour of sustainable development.
- 5.16 Planning permission should only be refused where the harm caused by allowing a development would significantly and demonstrably outweigh the benefits. The proposed extension of an established village, at the edge of the settlement would not cause significant harm to the character and appearance of the area, particularly as the development would be viewed against the existing developed form. The site is technically agricultural land, but due to the small size of the portion of land and the site constraints, it is not viable for farming.
- 5.17 With regards to sustainability the proposed development would contribute to building a strong, responsive and competitive economy, by ensuring that housing land of the right type is available in a sustainable location at a time when local

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<sup>1</sup> Data from EIR request made to NLC February 2022 (Appendix 1)

<sup>2</sup> As evidenced in Appeal APP/Y2003/W/21/3278257

authorities are required to support the Government's objective of significantly boosting the supply of homes. The development would support growth within the village of Kirmington, with sustainable development identified as an overarching objective of the Core Strategy.

- 5.18 Kirmington is ranked 37th out of 76 in the Sustainability Settlement Survey 2019, with 3 of out 7 key facilities. This document identifies Kirmington as a smaller rural settlement, which is capable of taking residential infill development of an appropriate scale to the settlement either within or adjoining the settlement.
- 5.19 Buses run from Kirmington to Scunthorpe via Brigg, Barnetby and Humberside Airport seven times per day, with the bus stop close to the application site. Buses depart Kirmington from 7.20am, arriving in Brigg at 7.55 and Scunthorpe at 8.25am, leaving Scunthorpe and Brigg at 4pm and 4.30pm respectively, which would allow for commuting for work. It should also be noted that trains run hourly from Barnetby train station to Grimsby and Cleethorpes, Scunthorpe, Doncaster, Sheffield and Manchester. The timetable can be seen in the planning statement which was submitted with the application.
- 5.20 The planning statement submitted with the application details the economic benefits of the proposed development, which includes jobs during construction and spending in the local economy, as well as social and environmental benefits, which are considered to outweigh any harm. There is a business park, school and public house within walking distance of the application site, as well as good public transport links. With the significant increase in hybrid and home working possibilities since the Covid-19 pandemic, there is overall less requirement to travel to work and certainly more options for people to choose the option of working from home. There has also been an increase in on-line shopping both for goods and groceries in recent years, with many supermarkets offering delivery slots which are 'greener' and with vehicles which are electric or low emission. The dwellings will be fitted with EVC charging points (secured by condition) and can utilise renewable energy features such as air source heat pumps and solar panels. This would give potential residents the opportunity to have a sustainable lifestyle whilst also supporting the local economy.
- 5.21 As outlined in the NPPF, there is a presumption in favour of sustainable development and development proposals should be approved unless the adverse impacts significantly and demonstrably outweigh the benefits. The site is adjacent to the development boundary and close to facilities within the village. Recent appeal decisions have stated that such proximity to settlement boundaries, and proximity to facilities would suggest that such a small-scale development is sustainable. For these reasons it is not considered necessary, in policy terms, to look for other available sites within the development boundaries. Notwithstanding this, there are no sites available for sale within Kirmington which would accommodate a development of this size.

5.22 With regards to the urbanising effect of the development on the southern edge of the settlement (see figure 1 below), this is not considered to be different to any edge of settlement developments across the country, all of which bring built form into rural landscapes. This point is not disputed; however, it is not considered that the introduction of this built form would have a major detrimental impact on the open character and appearance of the landscape and certainly insufficient to justify refusing the application. The indicative block plan shows retention of the mature boundary (see figure 2) landscaping along the Habrough Lane boundary, and sections along Limber Road, which would soften the appearance of the development. The application site and number of dwellings have been significantly reduced since the previous application and appeal, with the new layout being more in keeping with the surrounding development. Habrough Lane, Limber Road and the access road to the pumping station and dwellings (The Swallows and The Willows) framing the application site and separating it from the open countryside beyond.



*Figure 1: application site in context with surrounding development*



Figure 2 – Site as seen from the south showing lit footway, 30mph sign and mature site boundary.

## 6. CONCLUSIONS

- 6.1 It has been demonstrated that the proposed development is sustainable and would provide social, environmental and economic benefits to Kirmington and would provide housing to meet a local need. There would be no very limited adverse impact on character of the area and no loss of amenity to neighbouring properties nor any adverse impact on highway safety.
- 6.2 The development is sustainable, and it is not considered that there are any material considerations which indicate that planning permission should not be supported. The relevant policies of the Core Strategy are considered to be out of date due to a significant amount of planning applications being approved contrary to these policies, outside of development boundaries and more importantly due to a lack of a 5 year housing supply. As such, planning applications in sustainable locations such as this, should be considered favourably. The NPPF is clearly more up to date than the North Lincolnshire Local Plan and Core Strategy and together with the weighted balance brought into play by the lack of a 5 Year Housing Supply, it is asserted that the application should be considered to be acceptable. The inspector is therefore respectfully requested to allow the appeal.