



## DEVELOPMENT MANAGEMENT

### APPEALS LIST AS AT 3RD JUNE 2021

<b>APPLICATION NUMBER &amp; SITE ADDRESS</b>	<b>APPEAL REFERENCE &amp; STATUS</b>	<b>OFFICER &amp; PROCEDURE</b>
DM/0679/19/TPO  94 Station Road Great Coates Grimsby North East Lincolnshire DN37 9NN	AP/017/19  INPROG	Paul Chaplin  Fast Track
DM/0260/20/FUL  Land At Hewitts Avenue New Waltham North East Lincolnshire	AP/016/20  INPROG	Jonathan Cadd  Written Representation
DM/0516/20/TPO  Treyarnon Lodge 2 Nicholson Road Healing Grimsby North East Lincolnshire DN41 7RX	AP/001/21  INPROG	Paul Chaplin  Fast Track
DM/0120/20/TPO  94 Station Road Great Coates Grimsby North East Lincolnshire DN37 9NN	AP/002/21  INPROG	Paul Chaplin  Fast Track

DM/0944/20/FULA  15 Lindum Road Cleethorpes North East Lincolnshire DN35 0BW	AP/005/21  INPROG	Emily Davidson  Fast Track
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## Appeal Decision

Site visit made on 17 February 2021

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 May 2021**

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**Appeal Ref: APP/B2002/W/20/3263129**

**36 Bargate, Grimsby DN34 4SW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Langdale Capital against the decision of North East Lincolnshire Council.
  - The application Ref DM/0130/20/FUL, dated 14 January 2020, was refused by notice dated 23 July 2020.
  - The development proposed is change of use from social club (Sui Generis) to shop (A1), demolish existing outbuildings, erect single storey rear/side extension to create new entrance to side elevation, associated works to form additional accesses, car parking, landscaping and servicing facilities and various other alterations.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately represent the proposal and I have therefore used it within this decision.

### Main Issue

3. The main issue is the effect of the proposal on highway safety.

### Reasons

4. The appeal site is a former social club which consists of a substantial building set in its own grounds. It is proposed to convert the building to a retail use, with an area for parking, manoeuvring and deliveries created within the grounds. Outbuildings to the rear would be demolished and a single storey extension erected. The site is located in a predominantly residential area, although there are commercial and community uses nearby including a veterinary surgery on the opposite side of Augusta Street. The Council also refers to facilities in the wider area, including St James School and the Grimsby Institute.
5. At the time of my visit, Bargate was well-trafficked, commensurate with its classification as an A road which is one of the main routes into the town centre.

Traffic speeds were not excessive, as reflected by the 85th percentile speed of approximately 30mph as submitted by the appellants.

6. The proposed retail use would serve the local area as well as passing traffic. It is common ground between the main parties that the proposal would not be likely to generate significant additional traffic.
7. A new vehicular and pedestrian access would be created from Bargate, which would be entrance-only for vehicles. An exit-only point would be created onto Augusta Street. A new service only exit point would be created onto Augusta Street to the rear of the main building. This would in effect create a one-way vehicular circulation route through the site, with vehicles entering the site from Bargate, and exiting onto Augusta Street.
8. The site is located in close proximity to 3 existing junctions with Bargate. Namely the junctions with Brighowgate, Abbey Road and Augusta Street. Brighowgate also leads to Grimsby Town Centre and I saw that there were frequent vehicle movements through this junction. The Council also submits that Abbey Road is also used as a secondary access to the town centre and this reflects the number of traffic movements I observed passing through this junction. Augusta Street is of a predominantly residential character, with a more limited flow of traffic. The evidence indicates that vehicles turning right off Bargate through these junctions currently restrict the free-flow of traffic.
9. To the north of the junctions is a signalised pedestrian crossing. There were a number of pedestrians passing through this area with many using the pedestrian crossing at the time of my visit, and I am mindful that there is a school located further to the north and an associated playing field to the south. I also saw that Bargate and Brighowgate were used by a number of cyclists. Bargate is a bus route, and there are bus stops located to the south of the appeal site. The highways context of the appeal site is therefore of a number of roads and junctions located in close proximity to each other, as well as other sensitive highway features.
10. There is a history of collisions in this area, with various figures being referred to in respect of different periods, including the 5-year period up to 2019 where 4 collisions occurred in the vicinity of the site, including 2 classed as serious. The appellants submit that this level of accidents is not unusual or significant and does not indicate high or severe safety risks. The appellants place particular emphasis on the annual average accident rate and contend that this is not unusual for an A Road such as Bargate. Nevertheless, I am mindful of the number of serious collisions. Reference has also been made to a risk matrix which indicates that it is likely that a slight or serious collision may occur in the future in this location. While this may represent a green-amber rating in terms of the matrix, I consider the likelihood of a serious collision occurring is an important factor when considering the potential effects of the appeal proposal.
11. Over the course of the application, the appellants have considered a number of options for access to the site in response to concerns expressed by the Council. A Road Safety Assessment<sup>1</sup> (RS Assessment) recommended that the scheme progress on the basis of right turn provision provided on Bargate serving both the proposed development and Abbey Road. This is the appellants' preferred option.

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<sup>1</sup> RSA Response and enclosures, Curtins, 29 April 2020.

12. The proposed right turn lanes are only of sufficient length to contain a single vehicle each. The appellants have referred to average queues and right turn delays at peak times, and consider that this would generate negligible levels of queuing. However, the number and timing of vehicles accessing Bargate at peak times would not be evenly spaced. It would not be uncommon for more than one vehicle to turn right to enter the site at any one time, which would result in vehicles waiting to enter the right turn lane. This would lead to queuing vehicles on Bargate affecting the flow of traffic, and increase the likelihood of shunt collisions.
13. The Council also refer to the risk of head-on collisions due to the limited length of the proposed right turn lanes, and conflict between vehicles turning right into the appeal site and onto Brighowgate and Abbey Road. The Council also refers to avoidance action being taken at the last moment, with resultant harm to the safety of other highways users. The reduction in lane widths resulting from the provision of the right turn lanes would also leave little margin for error. Due to the complex arrangement of the junctions that would result from the proposal as well as the nature of traffic in this area, I share the Council's concerns.
14. With regards to deliveries, the appellants have provided a swept path analysis which shows that a HGV could be accommodated in the right turn lane without holding up passing traffic. However, due to the constraints of the right turn lane, HGV's would need to be carefully manoeuvred to be fully contained within the right turn provision. Given the well-trafficked nature of Bargate and the number of conflicting traffic movements in this area of junctions, I do not consider that such manoeuvres are realistic. HGV's turning right into the site would therefore be likely to overhang the right turn lane and conflict with passing traffic. I acknowledge that the timing of deliveries will vary, that they will be limited in number, and that deliveries may approach from different directions. However, the consideration of HGV movements into the site adds to my concerns in respect of the new access from Bargate.
15. The Council indicates that Bargate forms a key route into the town centre for cyclists. The appeal proposal would also generate a degree of cycle traffic, although not all of this would be on Bargate. The provision of the right turn lane would narrow the lanes on either side on Bargate, resulting in cyclists being 'squeezed' to the kerb by passing vehicles (including buses and HGV's) or being placed under undue pressure by impatient drivers. The provision of further right turn movements in an already complex environment could also lead to conflict between vehicles and cyclists. Even allowing for the distance of the lane width reduction, I consider that these matters would lead to significant harm to the safety of cyclists passing along Bargate, as well as discouraging cycling.
16. The appellants submit that the resulting carriageway widths would accord with the guidance of LTN 1/20<sup>2</sup> (the LTN). However, the quoted guidance<sup>3</sup> is taken from a chapter of the LTN relating to "Quiet mixed traffic streets and lanes" which does not reflect the circumstances of Bargate. The appellants' evidence in respect of the LTN does not therefore lead me to a different conclusion in respect of the effect of the proposal on cyclists.

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<sup>2</sup> Cycle Infrastructure Design, Local Transport Note 1/20, Department for Transport, July 2020.

<sup>3</sup> Included in Transport Technical Note, Curtins, 06 November 2020

17. The Council also contends that footpaths in the vicinity of the site along Bargate are of a substandard width for urban roads, and this reflects my own observations where extents of the footpaths adjacent to this busy road appeared to be relatively narrow. The narrowing of the lanes on either side of the right turn lanes would bring vehicles and cyclists on this busy road closer to pedestrians on a constrained footway. Mindful of the existing pedestrian movements through this area and the pedestrian movements generated by the proposal, this adds to my concerns on the harm arising from the scheme.
18. I have considered the other options for the proposed access from Bargate. The appellants consider that the existing layout with no changes to road markings along Bargate would be suitable in road safety terms. However, the appellants' RS Assessment identifies a risk of side swipe collisions as well as potential kerb strikes and conflict with traffic waiting to turn out of the Abbey Road junction. The Council also refers to a right-turning rigid HGV which could lead to traffic backing up behind it, or straddling the centre-line bringing it into conflict with on-coming traffic. The alignment taken by vehicles turning from Bargate may also conflict with passing traffic, and I am mindful of the evidence regarding right turning vehicles off Bargate currently restricting the free-flow of traffic. For these reasons, and due to the complex nature of traffic movements in this area, I do not consider that providing a new vehicular access based on the existing layout of Bargate would be acceptable.
19. A further option was the provision of a longer right turn lane into the appeal site, with traffic turning right into Abbey Road waiting in an area of hatch markings. However, the RS Assessment indicates that drivers may be reluctant to use this arrangement, thereby increasing the risk of collisions. The concerns expressed previously in relation to the effect of a right turn lane on the lane widths for passing traffic would also apply to this option. For these reasons, as well as the complex highway character of this area, I do not consider that this option would be acceptable with regards to highway safety.
20. The right-turn provision and associated narrowing of the vehicle lanes would be likely to reduce vehicle speeds in the area. However, even if that was the case, I do not consider that it follows that this would lead to a reduction in the frequency or severity of collisions. The proposal including ghost right-turn lanes would introduce a change in the nature of traffic movements associated with vehicles turning right from Bargate into the site, as well as a narrowing of the carriageway on either side. For the reasons stated previously, I consider that this would lead to an increase in the likelihood of collisions even with reduced traffic speeds.
21. The customer vehicular exit onto Augusta Street would replace the existing two-way access which served the social club. The new exit would be set further away from the junction with Bargate than the existing access. It is also proposed to reduce the height of boundary walls to improve visibility at this exit as well as implement a Traffic Regulation Order to restrict parking on Augusta Street. These would represent improvements compared to the current access layout. However, due to the proximity of the exit to the junction with Bargate, vehicles leaving the appeal site may conflict with queuing vehicles at the junction, thereby straddling the carriageway. Drivers turning right from Bargate would have little time to react to this situation or to vehicles emerging from the site, particularly right turning vehicles from Bargate which may have accelerated into the junction in response to a gap in passing traffic. The Council

- also refer to reduced views from Augusta Street northwards up Bargate which would further add to the complexity for drivers, and this reflects my observations on my site visit. Therefore, given the nature of traffic movements at peak times and the location of the exit point, I consider that this would increase the likelihood of vehicle collisions.
22. Reference has been made to traffic movements associated with the use of the social club. However, I consider that the nature of traffic generated by the club would be materially different from the appeal proposal, particularly at network peak times when the number of movements associated with a social club would be lower.
23. The appellants have provided extensive and detailed evidence which they consider addresses the highways issues raised by the scheme. This includes a Road Safety Audit (RS Audit)<sup>4</sup> which the appellants' highways consultant considers contains nothing to suggest that all 4 right turns cannot exist safely. However, as set out in the RS Audit, its sole purpose was to identify features of the scheme that could be removed or modified to improve safety. Although the RS Audit does refer to matters relating to the road safety implications of the scheme and consideration of collision data, my overall assessment is that it does not represent as robust a consideration of the relationship between the proposal and existing junctions as is contended by the appellants. Reference is made to a low rate of annual collisions in the vicinity of the appeal site and that highway safety risks described by the Council currently exist. While that may be so, that is not a justification for increasing potential conflicts between vehicles as well as other highways users in the vicinity of the appeal site.
24. In comparison to the detailed evidence provided by the appellants, the Council's concerns are expressed in more general terms. However, when considered objectively and in context, it is my judgement that the Council's concerns are well-founded.
25. In its reason for refusal, the Council refers to a 'severe' adverse impact on highway safety. However, paragraph 109 of the National Planning Policy Framework (the Framework) refers to considerations of whether the residual cumulative impacts on the road network would be severe. Although the proposal may lead to traffic backing up at peak times, based on the evidence in respect of extra trips generated by the proposal and the capacity of the network including junctions, I do not consider that the impact on the highway network would be severe. However, the Framework also refers to an unacceptable impact on highway safety. Based on what I have seen and read, it has not been demonstrated that the proposal would not have an unacceptable impact on highway safety.
26. For the reasons given above, I conclude that the proposal would have an unacceptable impact on highway safety. The proposal would therefore conflict with Policies 5 and 36 of the North East Lincolnshire Local Plan 2018 with regards to the provision of suitable access and promoting sustainable transport. The proposal would also conflict with the Framework with regards to providing safe and suitable access which would not have an unacceptable impact on highway safety.

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<sup>4</sup> Stage 1 Road Safety Audit Report, RKS Associates, June 2020 & RSA Response 2, Curtins, 24 June 2020.

### **Other Matters**

27. I am mindful of the benefits of the proposal. It would result in the restoration and refurbishment of a locally listed building in a prominent location in the Wellow Conservation Area (CA). The proposal would therefore enhance the character and appearance of the CA. The development would also provide convenient retail facilities for the local community, as has been reflected in comments raised in support of the proposal. The scheme would also generate new employment. However, these benefits would not outweigh the unacceptable harm that I have identified regarding highway safety.
28. The appellants refer to an arrangement made with the land owner and leaseholder to redevelop the site. Due to the terms of this agreement, it is submitted that a convenience store of the type proposed is the only viable option. However, no substantive evidence has been provided in support of this. In any event, this would not outweigh the identified harm to highway safety.

### **Conclusion**

29. For the reasons given above, I conclude that the appeal should be dismissed.

*David Cross*

INSPECTOR





## Appeal Decision

Site visit made on 20 April 2021

**by C McDonagh BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 May 2021**

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**Appeal Ref: APP/B2002/Z/21/3268273**

**Land to the East of Upper Burgess Street, Grimsby DN31 1QD**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Graeme Hughes (Aight Media) against the decision of North East Lincolnshire Council.
  - The application Ref DM/1069/20/ADV, dated 3 December 2020, was refused by notice dated 2 February 2021.
  - The advertisement proposed is the erection and display of a single, freestanding 48-sheet digital LED advertising unit.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effect of the advertisement on public safety and amenity.

### Reasons

#### *Public Safety*

3. The proposed advertisement would be positioned facing the junction of Victoria Street South/Peaks Parkway (A16) and Frederick Ward Way/Ellis Way (A1136). These two roads form a major thoroughfare and carry large volumes of traffic through the centre of the town. I observed the area was heavily trafficked even at the early afternoon time of my site visit. The junction of the two roads is signal controlled with pedestrian crossings on all sides.
4. The Planning Practice Guidance (PPG) advises that all advertisements are intended to attract attention, while at locations where drivers need to take more care, such as at junctions, advertisements are more likely to affect safety. In addition, the PPG also states that advertisements that are illuminated may distract drivers while those which, because of their size or siting, would obstruct or confuse a road-user's view.
5. I take on board the appellants point that the advertisement would not be visible from Victoria Street South before reaching the traffic signals and pedestrian crossing at the junction. Drivers would need to be aware of their road position prior to this point to ensure they are in the correct lane to turn either left or right or drive straight through the junction.

6. Be that as it may, the advertisement would be prominent for drivers at the traffic lights. During my site visit I observed several instances of vehicles changing lanes. Moreover, once through the junction drivers must safely merge into a single lane very soon thereafter on Peaks Parkway. The illumination of the appeal proposal would, in combination with the siting adjacent to a busy junction, be distracting to drivers passing through the junction and would hinder the navigation of lanes before merging. Despite rush hour speeds being lower, this would adversely affect public safety. The lack of accident data produced by the highways officer does not persuade me the proposal would be acceptable in this regard.
7. The appellant argues that an advertisement was consented by the Council nearby in the car park on the corner of Victoria Street and Frederick Ward Way. It is claimed the proposal should have been consented to show consistency in decision making. However, from my observations there are notable differences between the advertisements previously consented and the proposal before me. The Victoria Street car park advertisement is positioned facing drivers moving away from the junction at some distance. As such, drivers would have navigated the junction without the need to merge before the advert becomes prominent in views. Conversely, the appeal proposal would be closer to the junction and therefore more prominent as described above. In any event, each proposal is assessed on its own merits and it is incumbent on me to form my own judgement. The allowing of a similar advertisement nearby does not in itself persuade me the proposal before me would not harm public safety.
8. While the advertisement would be of significant size, it would not be disproportionately large compared to other advertisements in the area cited by the Council. However, given the location and illumination of the proposal, I find a strong likelihood that it would distract drivers at a key junction where added concentration is required. As such, this would generate significant harm to public safety.

#### *Amenity*

9. The appeal site comprises a strip of land at the northern edge of a public car park. The area is commercial in nature, situated within the town centre of Grimsby, with the appeal site located to the rear of several commercial units. The proposed advertisement is an internally illuminated LED display affixed to a steel frame measuring 3.2 metres high, 6.2m wide and an overall height of 5.7 metres above ground level.
10. When viewed from the adjacent roads and footpaths, although of a significant size, the advertisement would sit comfortably beside the vacant commercial building at the head of Upper Burgess Street and among other commercial properties in the area more generally. While I observed no other advertisements of this type in the local area, in my view it would not be isolated given other illuminated signage in the area attached to commercial buildings at upper levels.
11. Although the digital panel would result in some change to the character of the area the context is commercial. Furthermore, it is not within a scenic, architectural or cultural area whereby an advertisement must be in keeping with these features. Therefore, the inclusion of an advertisement in this location would appear in keeping with the nature of the area. The proposed illumination would be within industry guidelines which could be controlled

through a suitably worded planning condition ensure there would be no harm to amenity. Therefore, I find that the proposed advertisement would not harm amenity to a degree that would justify withholding consent.

### **Conclusion**

12. In their reasons for refusal the Council has referred to policies from the development plan and the National Planning Policy Framework (the Framework). However, the power under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any material factors.
13. I have considered policies 5 and 22 of the North East Lincolnshire Local Plan 2013 to 2032, adopted 2018. Whilst not decisive, the proposal would be contrary to Policy 22 of the North East Lincolnshire Local Plan (2018). This advises, amongst other things, to ensure that for express consent to display advertisements respects the interest of public safety. Policy 5 states all development proposals located within or outside of the defined boundaries will be considered with regard to suitability and sustainability, having regard to numerous factors. These include the size and scale of the proposed development and visual intrusion. I have determined there would be no harm to the amenity of the area in this regard and as such, the proposal would be in accordance with this policy and the Framework, which advises the quality and character of places can suffer when advertisements are poorly sited and designed.
14. For the reasons given above, although I have not found harm to amenity, this does not outweigh the significant harm to public safety. Accordingly, I conclude that this appeal should be dismissed.

*C McDonagh*

INSPECTOR



## Appeal Decision

Site visit made on 20 April 2021

**by C McDonagh BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 May 2021**

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### **Appeal Ref: APP/B2002/W/20/3264854 Rear of 59 Cheapside, Waltham DN37 0HE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Mr Herby Glover against the decision of North East Lincolnshire Council.
  - The application Ref DM/0265/20/REM, dated 25 March 2020, sought approval of details pursuant to condition No 2 of a planning permission Ref DM/0148/17/OUT, granted on 28 April 2017.
  - The application was refused by notice dated 10 November 2020.
  - The development proposed is the design of the proposed dwellings and all associated works.
  - The details for which approval is sought are: access, appearance, landscaping, layout and scale.
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### **Decision**

1. The appeal is allowed, and the reserved matters are approved, namely access, appearance, landscaping, layout and scale details submitted in pursuance of condition No 2 attached to planning permission Ref DM/0148/17/OUT granted on 28 April 2017, subject to the conditions set out in the Schedule at the end of this decision.

### **Application for costs**

2. An application for costs was made by Mr Herby Glover against North East Lincolnshire Council. This application is the subject of a separate Decision.

### **Main Issue**

3. The main issue is the effect of the proposal on Buck Beck, with regard to surface water drainage and flood risk.

### **Reasons**

4. The appeal site is located to the rear of No.59 Cheapside. It is bound by No.59, residential gardens to either side and Buck Beck. Several dwellings on Cheeseman's Close also border the beck to the other side, which is the main drainage channel for the area. This has been subject to both formal and informal strengthening of its banks over the years. This was evident on my site visit, with tyres, fencing and other items used in this manner.
5. Outline planning permission was granted to demolish commercial outbuildings and erect 3 dwellings under application reference DM/0148/17/OUT (the outline

- permission). Under the outline permission all matters were reserved for future consideration. The proposed layout plan confirms the 3 bungalows would be located towards the rear of the site in a linear arrangement facing the access from Cheapside albeit offset from one another.
6. The appeal site is located within Flood Zone 1, which is the lowest risk area for flooding. However, I note the concerns of the Council and occupiers of nearby properties with regard to the increased surface water levels and potential damage to Buck Beck, the banks of which are considered to be in poor condition and unstable.
  7. The Council has provided a map of surface water flooding from the beck and I understand there was a flooding event which affected several properties nearby in 2007. Given this unfortunate incident, I appreciate the concerns of local people in this regard. However, the Council drainage officer states that the proposed drainage strategy for the development would result in a discharge rate of 1.3 litres per second maximum, which is lower than both the existing site rate of 2.3 litres per second maximum and an equivalent greenfield site. Moreover, the location of discharge into the beck would not cause a detrimental impact on the integrity of the beck or the flow rates within it.
  8. Furthermore, there is agreement from the drainage officer that the strengthening works to the banks of the beck would not harm its structural integrity, including where it meets the rear of No.53 Cheapside. While the works would be to a stretch of 8.6m rather than the whole bank where it borders the site, this section is relatively straight, and it is not considered at a high risk of erosion. While there is concern this could increase flood risk elsewhere, there is nothing before me to substantiate this, especially in light of the decreased surface water discharge rate.
  9. I note the concerns of some local residents that the removal of trees and activity during the construction phase of the development could cause harm to the structural integrity of the beck. However, the plans indicate 80% of trees within the site will be retained with some removed due to their condition. I did observe some trees to be in poor condition and I note this is agreed by interested parties. The appellant has prepared a tree protection plan to safeguard the remaining trees which can be secured by condition, while replacement tree planting and erosion control matting on the top surface would be used to further strengthen the bank. Moreover, the nearest plot to the beck has been moved to a distance of at least 6m. This distance has previously been advised to allow machinery to access and maintain the beck itself. Furthermore, the design of the foundations of the proposed dwellings can reasonably be dealt with through the approved plans and the building regulations.
  10. Overall, the proposed strengthening works to the banks of the beck would have a lifespan of 75 years. This would indicate an appropriate long-term approach and I note this is agreed by the drainage officer. As such, from the evidence before me, it is clear there would be no increased risk of flooding on the site or to areas nearby as a result of the proposal.
  11. For these reasons, the proposed development would not have an adverse effect on Buck Beck with regards to increased surface water and flood risk. Accordingly, the scheme would comply with Policies 5 and 33 of the North East Lincolnshire Local Plan (Adopted 2018). These policies seek to ensure

development has regard to flood risk, is safe during its lifetime and Sustainable Drainage Systems (SuDS) have been incorporated into the development.

### **Other Matters**

12. Representations by local residents have questioned the need for fencing along the rear boundary of the proposed properties. However, there is no indication of why this is inappropriate, and fencing along a boundary of a residential property would not appear unusual. As such I have no reason to dispute this aspect of the site design.
13. There is also concern as to the possibility of a loss of privacy due to overlooking of neighbouring properties from the bungalows. However, the proposed dwellings are single-storey and are positioned a suitable distance from existing properties to avoid overlooking. Moreover, permitted development rights to extend or alter the roofs of the proposed dwellings were removed through a condition attached to the outline permission.
14. Some representations claim there are inaccuracies in some of the plan drawings, particularly with regard to the boundary of the site. However, there is nothing before me to substantiate this and I note this was not raised as an issue by the Council. Furthermore, the maintenance of a manhole within the garden of No.59 would not be a matter of consideration for this appeal.

### **Conditions**

15. A condition is necessary in the interests of certainty to ensure that the development is carried out in accordance with the approved plans. This includes foundation details which were suggested as a separate condition, to avoid duplication. A condition to secure the external materials is necessary in the interests of appearances of the dwellings.
16. Given the nature of the development I have also included conditions requiring the adherence of details agreed for surface water drainage and strengthening works to Buck Beck as part of the development as well as in future for any maintenance works required.
17. I note some remediation work in relation to contamination has already been undertaken. On this basis the Council's Environmental Health Officer considers the site is acceptable for development. However, I would agree that it is necessary to include a condition to set out the required steps in relation to contaminated land discovered during construction in order to protect future users.
18. Further conditions for the implementation and subsequent maintenance of the landscaping scheme set out in the approved plan and to ensure that the proposed development would make appropriate arrangements for water efficiency are necessary to meet the requirements of the development plan in these regards. Details of the bin storage area are required to be submitted for agreement by the Council to ensure sufficient waste management for the new dwellings
19. A condition to remove permitted development rights as detailed in the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any statutory amendment thereto), to ensure no development is undertaken under Schedule 2 Part 1, Classes A, B, C and E was suggested by

the Council in order to protect the living conditions of occupiers of nearby properties. However, I note a similar condition was added to the outline permission removing permitted development rights for extensions to the roofs of the proposed dwellings under classes B and C. The suggested condition duplicates these elements unnecessarily. There is no justification before me to further restrict permitted development rights under classes A and E and as such, I have not attached this condition.

**Conclusion**

20. I have found that the proposal would not adversely affect Buck Beck. As such there would be no increase in the risk of flooding within the appeal site or to nearby dwellings. As such, the proposal accords with the development plan taken as a whole and, for the reasons given, I conclude that the appeal should be allowed.

*C McDonagh*

INSPECTOR

### **Schedule of Conditions**

1) The development hereby permitted shall be carried out in accordance with the following approved plans:

RD3962-17 Proposed site layout  
RD3962-21A Layout and Cross Section  
RD3962-18 Plot 1 Plans and elevations  
RD3962-19 Plot 2 Plans and elevations  
RD3962-20 Plot 3 Plans and elevations  
RD3962-07A Site location plan  
RD3962-23 Tree protection  
RD3962-22 Proposed Access Plan  
RD3962-25 Proposed foundations  
1115-1163-CIV-30-P2 External Works  
1115-1163-CIV-40A Access construction details  
TR20-3317 RSS Cross Section erosion detail plan

2) The external surfaces of the development hereby permitted shall be constructed in the materials as detailed in the Materials Schedule (dated 6th March 2020).

3) Prior to the occupation of any dwelling hereby permitted, the development shall be built out in accordance with the surface water details on plan ref: 1115-1163-CIV-10 (rev P10).

4) Prior to any construction works or ground works for the construction of the hereby permitted development, the erosion control scheme for the bank of Buck Beck, as detailed on plan ref: RD3962-17 and TR20-3317\_RSS - V1 (reinforced soil slope) including the landscape planting, shall be fully completed.

5) The measures detailed in the Construction Management Plan (dated 31st March 2020) shall be adhered to at all times during the construction of the development.

6) Access arrangements to Buck Beck, as shown on plan ref: RD:3962-22, shall be provided at the request of the Local Planning Authority in order to undertake maintenance and repair work.

7) No soil is to be imported to the site unless or until it has been tested for contamination and assessed for its suitability for the proposed development; a suitable methodology for testing this material should be submitted to and agreed by the Local Planning Authority prior to any soils being imported onto site.

8) If during redevelopment contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing with the Local Planning Authority. All remediation shall be undertaken in accordance with the details approved.

9) All planting, seeding or turfing comprised in the approved details of landscaping in plan ref RD3962-17 shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously



damaged or diseased shall be replaced in the next planting season with others of similar size and species.

10) The development shall be built out in accordance with the Water Use Calculations (dated March 2020).

11) Prior to the first occupation of any dwelling on the site details of a bin storage area for collection days shall be agreed in writing by the Local Planning Authority. The then approved bin store shall be constructed and made available for use prior to any of the dwelling being first occupied.



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## Costs Decision

Site visit made on 20 April 2021

**by C McDonagh BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 May 2021**

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### **Costs application in relation to Appeal Ref: APP/B2002/W/20/3264854 Rear of 59 Cheapside, Waltham DN37 0HE**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Herby Glover for a full award of costs against North East Lincolnshire Council.
  - The appeal was against the refusal of planning permission for the design of the proposed dwellings and all associated works.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises through paragraph 028 that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Costs may be awarded to any party regardless of the outcome of the appeal.
3. Paragraph 047 of the PPG provides a non-exhaustive list of examples of unreasonable behaviour by local planning authorities. This includes substantive and procedural matters, such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations or fails to provide evidence to substantiate the reasons for refusal.
4. I note the application was recommended for approval. However, a planning committee is not bound to accept the advice of its officers or technical consultees. I have been provided with the relevant committee meeting minutes and on my reading the views given clearly relate to whether the proposal would lead to increased flood risk as a result of damage to Buck Beck and increased surface water. This was supported by testimony from local people who have experienced flooding in the past.
5. Furthermore, the issue of flood risk as a concern was raised in a previous appeal<sup>1</sup> on the site which was dismissed on flood risk grounds. While the site has subsequently been the subject of a further appeal<sup>2</sup>, which concluded the

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<sup>1</sup> APP/B2002/W/18/3195839

<sup>2</sup> APP/B2002/W/20/3258040

drainage scheme was acceptable, this was determined after the planning committee had refused the proposal subject to this appeal.

6. These are all matters of planning judgement, and although as is clear from my decision I disagree with their position, from the information before me and in relation to the test of unreasonable behaviour, I do not therefore find that it was unreasonable for the planning committee members to refuse the application contrary to officer advice.
7. Although the drainage issue was not raised within the granting of permission of an outline application, this could be reasonably addressed in a reserved matters application as aspects such as the site layout and landscaping could impact upon the surface water discharge rates, for example.
8. Consequently, there was a fundamental disagreement between the parties in this case which could have only been resolved by way of an appeal. As such unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

### **Conclusion**

9. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, I determine that the costs application should fail, and no award is made

*C McDonagh*

INSPECTOR