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## Appeal Decision

Site visit made on 23 February 2021

**by C Coyne BA (Hons) DipTP MRTPI**

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

**Decision date: 9<sup>th</sup> June 2021**

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**Appeal Ref: APP/B2002/W/20/3263475**

**Land at corner of Hewitt's Avenue and Humberston Road, New Waltham DN35 9QR**

- 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 YPG Developments Ltd against the decision of North East Lincolnshire Council.
  - The application Ref DM/0260/20/FUL, dated 26 March 2020, was refused by notice dated 30 October 2020.
  - The development proposed is described on the application form as 're-submission of application DM/0971/17/FUL, due to lack of determination of the application, to create 68 dwellings and 18 apartments'.
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### Decision

1. The appeal is allowed and planning permission is granted for Resubmission of DM/0971/17/FUL for the erection of 68 houses and 18 apartments with new access and associated landscaping and works at land at corner of Hewitt's Avenue and Humberston Road, New Waltham DN35 9QR in accordance with the terms of the application Ref DM/0260/20/FUL, dated 26 March 2020, and the plans submitted with it, subject to the conditions set out in the schedule to this decision.

### Application for costs

2. An application for costs was made by YPG Developments Ltd against North East Lincolnshire Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The Council have described the development as 'Resubmission of DM/0971/17/FUL for the erection of 68 houses and 18 apartments with new access and associated landscaping and works'. I note that the appellant has also utilised this description on their appeal form. I consider that this revision provides an accurate description of the proposal and I have therefore determined the appeal on this basis.
4. The proposal has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations and is considered not to be EIA development. An Environmental Statement is therefore not required.
5. Both parties agree that the proposal is like a previous application ref. DM/0971/17/FUL which was granted planning permission, with the only difference between them being that the appeal scheme would not provide any affordable housing. I have therefore determined the appeal on this basis.

## **Main Issue**

6. The main issue is whether the proposed development is economically viable having regard to the provision of affordable housing in accordance with the relevant policies of the adopted development plan for the area.

## **Reasons**

7. The appeal site is an undeveloped piece of overgrown grassland located next to a busy roundabout serving the intersection between Hewitt's Avenue, Taylor's Avenue and Humberston Road (the A1031). Beyond the appeal site, to the rear and side, is a much larger area of open agricultural land. Towards the middle of the front of the site is a separate fenced-off area with a gate facing the footpath which contains an electrical substation.
8. According to the evidence before me, the appeal site is set within a much larger area of land that is allocated for housing under Policy 13 of the adopted North East Lincolnshire Local Plan (NELLP). The evidence also indicates that it is in a high value area as defined by Policy 18 of the NELLP which also states that in such areas the proportion of affordable housing units required to be provided is 20% on developments of more than 10 units subject to viability considerations including the submission of a site specific Financial Viability Statement in accordance with Policy 6 of the NELLP. The proposal would provide a total of 86 units comprising a mixture of four and five bedroomed dwellings and one-bedroom flats. Consequently, the appeal scheme is required to provide approximately 17 affordable housing units subject to viability considerations to comply with Policy 18.
9. The appellant has submitted several site-specific Financial Viability Appraisals (FVAs). The first FVA dated March 2020 (the Forman Report) included assumptions such as using the standard RICS Building Costs Information Service (BCIS) build cost data, no abnormal costs and that any external area costs would be dealt with via a percentage increase on the BCIS baseline levels. These additional external area costs were assumed to be 15% for dwellings and 10% for apartments producing an average construction cost of approximately £1,311 per sqm. It estimates the total build cost to be approximately £12,245,928. It also includes an assumed benchmark value for the developer return being approximately 20% for the market housing and approximately 6% for the affordable housing giving a blended profit rate of approximately 18.9%.
10. The Forman report found: that if the proposal was to provide 20% affordable housing, the increased percentage return on gross development value would be approximately 11.67%; that if the proposal was to provide 10% affordable housing, the return would be approximately 13.42%; and that if the proposal provided no affordable housing, the return would be approximately 16.44%. Consequently, its overall conclusion was that these returns were all lower than the benchmark meaning that it was not viable to provide any affordable housing.
11. In response to this the Council commissioned an independent review of the Forman Report by Bidwells, dated June 2020, (Bidwells no.1 report) which concluded that the provision of 20% affordable housing - equating to the delivery of approximately 13 no. units on site combined with a commuted sum payment of approximately £166,000 in lieu of 4 no. units - would generate a developer return of approximately 22.46% thereby exceeding the benchmark value meaning that the provision of 20% affordable housing would be viable.

12. The main reason for this was a difference in the assumptions in relation to the build costs and additional external area costs which were lower and based on latest BCIS data giving a total build cost of approximately £11,153,080.
13. Subsequently, the appellant produced a revised FVA dated July 2020 produced by S106 Management (the S106M report) which concluded that the total build costs would be approximately £12,771,407 which includes additional external, infrastructure and abnormal costs of approximately £3,296,358. It also concluded that as a result, the developer return would be approximately 13% which was again lower than the 18.9% benchmark meaning that the provision of affordable housing would not be viable.
14. In reply, the Council again commissioned a review of the S106M report by Bidwells and they produced a second report dated September 2020 (Bidwells no. 2 report). This review carried out an appraisal scenario comparison of a 100% market housing scheme without any affordable housing being provided and concluded that the developer return would be approximately 25.9% with the return dropping to approximately 22.46% if 20% affordable housing (comprising 13 units on site with a commuted sum payment of £166,000 in lieu of 4 units) was provided.
15. The Bidwells no. 2 report explains the reasons for this are that the S106M report included: a benchmark land value higher than the purchase price of the land; lower projected sales revenues based on a future dip in the housing market; high financial costs; and the inclusion of higher abnormal development costs equating to approximately £3,296,358. According to the Bidwells no. 2 report no substantive evidence was included in the S106M Report to justify the scale or extent of these increased abnormal development costs. As a result, the Bidwells no. 2 report estimated the cost of external works and infrastructure to be approximately £967,356.
16. The appellant then submitted an addendum to the S106M Report dated October 2020 (S106M addendum report) which made an attempt to find common ground with the Council in relation to the FVA assumptions such as base build costs. It also resulted in a revised abnormal development cost assumption figure of approximately £3,316,056 which included financial breakdown of external costs provided by Modero Ltd. This concluded that the effective return on the development if affordable housing is also provided would be approximately 8.67%.
17. In both the S106M Report and S106M addendum report a sum of over £3,000,000 was included under the heading 'site abnormalities' as infrastructure costs with the largest proportion of this cost – approximately £2,269,087 – being for roads, paths, pavings and surfacings. The appellant's final comments also include a further and more detailed breakdown of these costs with a revised figure of approximately £3,316,386 including costs related to the provision of a pumping station with a total build cost of approximately £13,816,880. The appellant's further affordable housing statement also includes a higher estimate of approximately 13.91% for the likely developer return.
18. Having regard to the Planning Practice Guidance<sup>1</sup> (the Guidance) it is my understanding that abnormal costs normally include those associated with treatment for contaminated sites or listed buildings, or costs associated with brownfield, phased or complex sites. It is also my understanding that site-specific infrastructure costs, could include access roads, sustainable drainage systems, green infrastructure, connection to utilities and decentralised energy.

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<sup>1</sup> Paragraph: 012 Reference ID: 10-012-20180724

19. Consequently, and having regard to the RICS guidance note<sup>2</sup>, I consider the costs calculated by Modero to be external site-specific infrastructure costs rather than abnormal costs, and that as such should be taken into consideration as part of any site-specific FVA on this particular scheme.
20. The appellant has provided detailed costings for the highway, footpath and junction improvements in order to provide access to the proposed development which amount to just above £2 million. These improvements have been subject to negotiations with the Highway Authority and the Local Planning Authority have had sight of these details and the associated costings as part of an application to discharge conditions (Ref DM/0932/19/CND) on the previously granted planning permission on the appeal site (Ref DM/0971/17/FUL). These details also appear to have been highlighted as part of the original application subject to this appeal as part of the submitted Transport Statement.
21. In their officer report the Council highlight that even so as these details had not been accepted and the related conditions had not been discharged that they would determine the application on the basis of the original layout plan and that this approach had been agreed with the Highway Authority. However, as a result, even though these conditions had not yet been discharged, it is clear the Council had knowledge of these likely site-specific infrastructure costs when they made their original decision.
22. Consequently, it would be reasonable to conclude that they should have had regard to these potential costs when considering the original application particularly when the updated viability assessments which included these same costs were submitted by the appellant. For these reasons and given the detailed costings which show the extent of these identified site-specific infrastructure costs contained within them I give substantial weight to the S106M report and the S106M addendum report in this case. For the same reason, I also afford lesser weight to the Fordham and both Bidwells reports.
23. I acknowledge that the Fordham Report did not include site-specific abnormal costs or site-specific infrastructure costs assumptions within its methodology instead using a broader approach using the standard RICS Building Costs Information Service (BCIS) build cost data with any external area costs being dealt with via a percentage increase on the BCIS baseline levels, as did both Bidwells reports. However, the site-specific infrastructure costs identified by the s106M reports are something which should have reasonably been considered.
24. I note the Council's point that the appeal site is a greenfield one and that as such it would not be expected to have significant abnormal costs associated with a large residential proposal given the assumptions in the Local Plan Viability Assessment update report dated December 2016 (LPVA). However, the generalised assumptions in the local plan viability assessment are area-wide, strategic, and non-site specific.
25. Furthermore, the costs outlined in the Modero report are not abnormal costs but site-specific infrastructure costs which can be taken into account under Policy 18 of the NELLP. Given that these costs also relate to significant highway improvement works to a large and busy junction that is near to a relatively well built-up area, they cannot reasonably be considered to be normal costs associated with delivering a traditional housing development on a greenfield site or that they would constitute a standard level of infrastructure in this case.

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<sup>2</sup> Assessing viability in planning under the National Planning Policy Framework 2019 for England RICS 1<sup>st</sup> Edition March 2021.

26. Moreover, according to the appellant's evidence, the 20% allowance for external costs as per the LPVA, would likely give an external works cost of approximately £2,046,162 which would be close to the costs calculated by Modero.
27. I also note the Council's point that the proposal could potentially undermine the provision of affordable housing on the other sites within this wider strategic land allocation and therefore, also potentially undermine the adopted development plan's strategic objectives. However, the appeal scheme has been assessed on its own merits taking into account the site-specific viability evidence provided by the appellant with the bulk of the identified costs being related to detailed highway improvements in and around the site and the nearby roundabout. In any case, any future residential development proposals on any other part of this strategic housing allocation would be assessed on their own merits taking into account relevant local plan policies and other considerations such as site-specific viability evidence, on a case-by-case basis.
28. The Council have also stated that their advice from Bidwells was that even when the additional costs on a 100% private scheme are included it produces a profit on GDV of approximately 18.7% and that the scheme as submitted would provide a return of approximately 18.9%. However, neither of the Bidwell's reports includes the likely site-specific infrastructure costs outlined by the appellant.
29. Consequently, I am satisfied that the proposed development would not be economically viable if the required amount of affordable housing was provided. I therefore conclude that the proposed development is not economically viable having regard to the provision of affordable housing in accordance with the relevant policies of the adopted development plan for the area. As a result, it would accord with the requirements of policies 6, 14, 15 and 18 of the NELLP.

### **Other Matters**

30. In their statement the Council raised a concern that no s106 legal agreement had been signed in relation to financial contributions for education and open space management and that this would therefore make the proposal unacceptable due to a lack of necessary infrastructure provision and that public open space areas would not be adequately secured.
31. However, as part of their evidence the appellant has submitted a fully signed s106 legal agreement dated 5 February 2021, stating that contributions will be made with respect to education, public open space and highways. As a result, I am satisfied that the proposal would ensure that all necessary infrastructure would be provided.

### **Conditions**

32. I have imposed conditions as set out in the attached schedule in light of the use of planning conditions set out in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. Consequently, in the interests of precision and clarity I have undertaken some minor editing and rationalisation of the conditions as contained in the Council's statement.
33. Conditions relating to the commencement of the development, ensuring compliance with the approved plans and external materials are necessary in the interest of clarity and the character and appearance of the area. I have also imposed a necessary condition relating to the submission of surface water drainage to mitigate and minimise any potential flood risk.

34. I have imposed necessary conditions requiring the submission of a written scheme of investigation for a programme of archaeological work, details of how water will be re-used and recycled on the site, a scheme to allow for future inclusion of individual electric car charging points and final details of ecological enhancement measures to the local planning authority for approval in the interest of the historic environment, natural environment and air quality.
35. I have imposed necessary and reasonable conditions requiring the submission of a landscaping scheme and details in relation to the planting of trees, retention of trees and hedgerows, felling of trees; and removal of hedgerows and the submission of an implementation schedule in the interest of the character and appearance of the area.
36. In the interest of highway safety, I have imposed a condition requiring the submission of details to the LPA for approval including the layout of carriageways and footways, the materials to be used for their construction, a highway drainage system, street lighting; final details of off-site highway works and a road safety audit.
37. In addition to these, conditions in respect of the submission of a construction management plan and details of the soundproofing of the proposed dwellings is necessary and reasonable to protect the living conditions of neighbouring occupiers.
38. In the interest of the local environment I have also imposed a condition in relation to the submission of a method statement for a scheme to deal with any potential contamination risk either during or after any construction works.

**Planning balance and conclusion**

39. The accord of the proposal with the development plan and the Framework when read as a whole is not outweighed by any other consideration. Therefore, for the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed, and planning permission is granted, subject to conditions.

*C Coyne*

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 drawing no. 01-M; Proposed Foul and Surface Water Drainage Layout drawing no. 115-002 Rev D; Landscape GA drawing no. 114-LYR-XX-XX-DWG-L-1000 Rev 6; Landscape GA (open space) drawing no. 114-LYR-XX-XX-DWG-L-1001 Rev 1; Landscape GA (open space-flooded) drawing no. 114-LYR-XX-XX-DWG-L-1002 Rev 0; Illustrative Sections drawing no. 114-LYR-XX-XX-DWG-L-5000 Rev 0; Apartment Block drawing no. 28A; House Type (A) drawing no. R04; House Type (B) drawing no. R05; House Type (C) Drawing no. R06; House Type (E) drawing no. R08; House Type (F) drawing no. R09; House Type (G) drawing no. R10; House Type (I) Drawing no. R12; House Type (K) drawing no. R14A; House Type (L) drawing no. R15; House Type (M) drawing no. R16; House Type (N) drawing no. R17; House Type (O) drawing no. R18; House Type (P) drawing no. R19; House Type (Q) drawing no. R20; House Type (R) drawing no. R24; House Type (S) drawing no. R22; House Type (T) drawing no. R23; House Type (V) drawing no. R25; House Type (X) drawing no. R26; Main Street Scenes drawing no. 29C; Pumping Station drawing no. 30.
- 3) Surface water drainage of the site shall be in accordance with Proposed Foul and Surface Water Drainage Layout drawing no. 115-002 Rev D. The scheme shall be implemented in accordance with these approved details prior to the occupation of any dwelling to which the drainage requirements refer.
- 4) No development shall take place until the applicant has:
  - i) Submitted a Written Scheme of Investigation or Specification for Works, for a programme of archaeological work, to the local planning authority.
  - ii) Received written approval of the Written Scheme of Investigation for a programme of archaeological work from the local planning authority.
  - iii) Implemented or secured implementation of the Written Scheme of Investigation for a programme of archaeological work.Use of the development shall not take place until the applicant has:
  - iv) Published or secured the publishing of the findings resulting from the programme of archaeological work within a suitable media.
  - v) Deposited or secured the deposition of the resulting archive from the programme of archaeological work with an appropriate organisation.
- 5) Before development commences final details on the sites ecological enhancement to follow the principles established in Brooks ecological report, shall be submitted to and approved in writing by the local planning authority. Ecological enhancements shall be carried out in accordance with the details approved.
- 6) Development shall not begin until these details have been approved by the local planning authority:
  - i) Detailed plans to a scale of at least 1/500 showing:
    - a) the proposed layout of the carriageways and footways on the development;
    - b) the wearing course materials proposed for the carriageways and footways;
    - c) cross sections;

- d) the highway drainage system;
- e) the proposed locations of street lighting columns, all services and ducts for services, within the carriageways and footways;
- f) 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.
- g) A Stage 1 and 2 Road Safety Audit (RSA) must be provided. The RSA should 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.

- 7) Prior to the development commencing, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. It shall include:
  - i) Contact details of the person with responsibility for the implementation of the CMP;
  - ii) The expected number, types and size of vehicles during the entire construction period;
  - iii) Delivery hours, including their management;
  - iv) Visitor, construction and contractor parking areas;
  - v) Materials storage area;
  - vi) Wheel cleaning facilities, including their location;
  - vii) Noise, vibration and dust mitigation measures;
  - viii) Construction traffic management plan;
  - ix) Details of expected delivery schedules and how this will be managed to eliminate waiting on the public highway (i.e. call ahead or pre-booking scheduling system), if required;
  - x) Hours of working with no construction work carried out on or before 08:00 or after 18:00 Mondays to Fridays, before 08:00 or after 13:00 on Saturdays and at any time on Sundays or Bank Holidays.Once approved, the Plan shall be adhered to at all times during construction.
- 8) Before development commences details on all external materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the materials approved.
- 9) No development shall commence until final details of the soft and hard landscaping of the site to follow the principles shown on landscaping plan 114-LYR-XX-XX-DWG-L-1000 Rev 6 shall be submitted to and approved in writing by the local planning authority. The scheme shall include:
  - a) the number, species, sizes and planting positions of all trees and shrubs to be planted and hard surface finishes;



- b) a plan including details of all trees to be retained, any to be felled, hedgerows to be retained, any sections of hedgerow or trees to be removed;
  - c) measures for the protection of trees and hedges during construction work including a schedule for implementation.
- 10) The landscaping shall be completed in accordance with the approved details under condition no. 9 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. Such tree planting shall be protected in accordance with the approved details during all construction works. All trees, hedges, shrubs and bushes shall be adequately maintained for a period of 5 years or until all construction is complete, whichever is the longer. During that period all losses shall be replaced in the next planting season.
- 11) No development shall take place until an updated 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. Such measures shall include financial incentives and an amended travel plan coordinator role. The development shall then be occupied in accordance with the measures approved.
- 12) Before development commences details on the soundproofing of the properties to follow the principles of the submitted noise report shall be 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 to which it relates and shall be so retained thereafter.
- 13) Prior to occupation of any dwelling, final details of how water will be reused and recycled on site shall be submitted to and agreed in writing by the local planning authority. Once approved, the details shall be adhered to at all times following first occupation.
- 14) The development shall not commence until a scheme to allow for 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 approved works for each individual unit shall be implemented on site before that unit is first brought into use and shall be retained thereafter for the lifetime of the development.
- 15) 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. Remediation shall be undertaken in accordance with the details agreed.



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## Costs Decision

Site visit made on 23 February 2021

**by C Coyne BA (Hons) DipTP MRTPI**

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

**Decision date: 9<sup>th</sup> June 2021**

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### **Costs application in relation to Appeal Ref: APP/B2002/W/20/3263475 Land at corner of Hewitt's Avenue and Humberston Road, New Waltham DN35 9QR**

- 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 YPG Developments Ltd for a full award of costs against North East Lincolnshire Council.
  - The appeal was against the refusal of planning permission for resubmission of DM/0971/17/FUL for the erection of 68 houses and 18 apartments with new access and associated landscaping and works.
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### **Decision**

1. The application for an award of costs is permitted in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include: 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; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
3. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
4. The applicant considers that the Council acted unreasonably by decided to draw their discussions to an abrupt conclusion on the matter of affordable housing when they had up to that point been working collaboratively to agree a way forward given that there was a significant amount of commonality in the Financial Viability Appraisals (FVAs) prepared by both parties. In addition, they also consider that the Council failed to properly substantiate their reason for refusal.
5. In their response the Council have stated that the recently adopted Local Plan (2018) which has been through a public examination including a viability assessment for its allocations/policies and was considered up to date with respect to the requirement for affordable housing and other contributions to

- offset the impact of the development on the area. It also noted that there were no obvious or particular aspects to developing this greenfield site which would suggest the viability would be significantly different from the standard model of development considered in the local plan assessment.
6. They also state that they acted reasonably in allowing an extension of time for the determination of the application and by accepting the appellant's updated FVAs including the related Modero Costings Report. In addition the Council highlight that the appellant was informed at various stages of the application determination process that the proposal could not be supported due to the lack of affordable housing provision and that as a result, they should not have been surprised at the decision or say that it was unexpectedly or abruptly decided.
  7. However, having accepted the appellant's updated FVAs and the costings report, the Council appointed their own consultants to review their findings all the while making their basic assumption that the appellant's site-specific infrastructure costs were abnormal costs meaning that in their view they were not valid costs for a traditional housing development on a greenfield site. Therefore, by doing so the Council appear to have not considered the possibility that these were in fact site-specific infrastructure costs which would not necessarily accord with the broad assumptions within the local plan assessment.
  8. Furthermore, the Council also had sight of detailed drawings relating to a potential highway improvement/mitigation scheme that the appellant had submitted as part of the application to discharge conditions on the previously approved scheme (Ref DM/0932/19/CND). They also failed to take these into consideration even though the parallel and associated site-specific costs had been outlined in the updated FVAs and the Modero Report submitted as part of the appeal application (DM/0260/20/FUL). Consequently, to my mind, the Council failed to take proper account of these site-specific infrastructure costs which were a product of proposed highway improvement/mitigation works that were a result of negotiations with the Highway Authority.
  9. Accordingly, even though the Council's Officer report sets out in some detail their reasons as to why they considered the proposed development to be unacceptable it does not adequately explain the reasons as to why the potential highway improvement scheme contained within the Transport Statement submitted as part the original application and its likely associated costings submitted as part of the updated viability evidence were not taken into consideration.
  10. Policy 18 of the adopted North East Lincolnshire Local Plan (NELLP) allows for site-specific viability considerations be taken into account if the applicant provides a FVA in accordance with Policy 6 of the NELLP. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the Council prevented development which clearly should have been permitted having regard to its accordance with the development plan, national policy and any other material considerations.
  11. As a result, I find that the refusal of planning permission in this case therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Guidance.

12. I therefore conclude that substantive unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is justified.

**Costs Order**

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North East Lincolnshire Council shall pay to YPG Developments Ltd, the full costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to North East Lincolnshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*C Coyne*

INSPECTOR



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## Appeal Decision

Site visit made on 1 June 2021

by **Diane Cragg DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 June 2021

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**Appeal Ref: APP/B2002/D/21/3268938**

**15 Lindum Road, Cleethorpes DN35 0BW**

- 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 Mr and Mrs Drewett against the decision of North East Lincolnshire Council.
  - The application Ref DM/0944/20/FULA, dated 4 November 2020, was refused by notice dated 18 January 2021.
  - The development proposed is 'rear dormer to extension loft conversion'.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effect of the development on (i) the character and appearance of the area; and (ii) the living conditions of occupiers of the adjacent residential properties with particular regard to privacy and outlook.

### Reasons

#### *Character and appearance*

3. Lindum Avenue is a residential street with a mix of detached and semi-detached houses set back from the road frontage behind small front gardens. Spaces between builds are relatively narrow so that garages are in rear gardens and many of the semi-detached properties have rear two storey outriggers.
4. Whilst each of the pairs of semi-detached houses along the row have different design details there are unifying features including the brickwork and rendered walls and the rosemary tiled pitched roofs with gable and hip details. Many dwellings, including the appeal property, have ornate ridge tiles. The resulting symmetry between pairs of houses and the common design features in the street provides a visually pleasing degree of uniformity which adds to the character and appearance of the area.
5. The appeal property is a semi-detached house with a gable roof to the front and side and extended outrigger with a pitch, hipped roof to the rear. The roof space of the property is already used as a bedroom which is lit by two small roof lights in the rear roof slope.
6. The proposed flat roof dormer would extend out from ridge height and up from the eaves line for the full depth, and most of the width, of the main roof. It

- would extend out over the rear outrigger retaining the hipped end but otherwise incorporating the outriggers pitched roof area. The space would be lit by French doors to the main room and high-level window to the en-suite.
7. Although the dormer extension would incorporate rosemary roof tiles to the walls when viewed alongside the attached neighbouring house, the additional high-level bulk of the proposal would result in the appeal property having an awkward top-heavy appearance. The combination of the altered roof form and the dormer spanning the original rear roof slope and the outrigger would result in a box like form that would have a discordant appearance on the roof and would harmfully erode the symmetry with the neighbouring property. The proportions of the French doors and the Juliette balcony would draw attention to the dormer and add to its 'top-heavy' appearance and prominence.
  8. I observed at my site visit that Lindum Road is slightly higher than Signhills Avenue to the rear. Whilst the dormer extension would only be glimpsed from Lindum Road because of the proximity between the side elevations of buildings it would be highly visible when viewed from the rear windows and gardens of adjacent properties. It would also be visible from Signhills Avenue between buildings. The proposal would result in the appeal property appearing unbalanced and visually dominant among the group of semi-detached houses. The pleasing degree of uniformity would be significantly undermined, and the proposal would fail to successfully integrate with its surroundings.
  9. I saw at my site visit the details of the dormer extension at 14 Signhills Avenue. No 14 is a more modest property and it does not have a rear outrigger. The dormer sits down from the roof line and in from the gable wall. Although the hipped detail has been removed its removal has allowed the dormer to be contained within the rear roof slope. I also note the other dormers within the area that have been brought to my attention. I accept that some of these do not sit comfortably within the roofscape, however, I observed during my site visit that these roof extensions are not a significant feature of Lindum Road and do not have an influence on the character of the area around the appeal site.
  10. Overall, I conclude that the proposal would detract from the character and appearance of the area in conflict with Policies 5 and 22 of the North East Lincolnshire Local Plan 2013 to 2032 (adopted 2018) (Local Plan) where these policies seek to achieve a high standard of design.
  11. The appellant refers to compliance with paragraphs 118 and 131 of the National Planning Policy Framework (the Framework) which support innovative design and seeks to maximise the use of land in urban areas by using the airspace above existing residential properties subject to the development being appropriate in its context. For the reasons I have set out, I consider that the proposal would conflict with these paragraphs of the Framework. It would also conflict with paragraph 127 of the Framework where it seeks to ensure that development will add to the overall quality of the area, be visually attractive as a result of good architecture and sympathetic to local character.

#### *Living conditions*

12. The rear dormer extension would be prominent from the gardens on Signhills Avenue. However, the relationship between the windows in the dormer are not significantly different to the windows in the first floor and no significant

overlooking would occur despite the size of the French doors. Moreover, the appeal site and its neighbours have relatively long rear gardens and the separation distances between properties are substantial.

13. Although it is a dominant addition that harmfully disrupts the character of the pair of houses and the character of the area, where the dormer projects out over the outrigger the dormer is set away from boundaries. The harm to the character and appearance of the area would alter the outlook from neighbouring gardens. However, the extent of such effects would not, overall, harm the living conditions of the occupiers of the neighbouring properties.
14. I therefore find that the development does not have a harmful effect on the living conditions of the occupiers of neighbouring properties with regard to privacy and outlook and in this respect would accord with Policy 5 the Local Plan where it seeks to ensure development does not impact on neighbouring land uses.

### **Conclusion**

15. For the reasons given above, I conclude that the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal is dismissed.

*Diane Cragg*

INSPECTOR



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## Appeal Decision

Site visit made on 1 June 2021

by **Mick Boddy F Arbor A FICFor CEnv**

An Inspector appointed by the Secretary of State

Decision date: 18 June 2021

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**Appeal Ref: APP/TPO/B2002/8106**

**Treyarnon Lodge, 2 Nicholson Road, Healing, Grimsby DN41 7RX**

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order (TPO).
- The appeal is made by Rachel Opie against the decision of North East Lincolnshire Council.
- The application, No. DM/0516/20/TPO, dated 5 July 2020, was refused by notice dated 28 August 2020.
- The works proposed are:
  - Poplar T1 - 18m tall, 18m spread. Retrenchment prune by up to 4m all over to suitable growth points to result in a tree 14m tall and 10m spread.
  - Beech T2 - reduce over extended laterals all over by up to 3m (to suitable growth points) to bring them in line with the main canopy.
  - Chestnut T3 - 16m tall 16m spread. Re pollard to previous points resulting in a tree roughly 8m tall and 8m spread.
  - Pine T4 - Fell. Tree has moderate lean and is weighted into the lean.
  - Conifers TG1 - re-top to previously topped height (approximately 8m).
  - Hornbeam TG2 - reduce 3x hornbeam in height by up to 3m to suitable growth points (from 20m to 17m tall). To fell a 4th smaller hornbeam that has a lean due to suppression by the 3 larger trees.
- The relevant TPO is the County of Lincoln, Parts of Lindsey Tree Preservation (Healing) Order 1973, which was confirmed on 15 August 1973.

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1. The appeal is allowed and consent granted for the felling of a Scots pine tree (T4 of the application) protected by the County of Lincoln, Parts of Lindsey Tree Preservation (Healing) Order 1973, in accordance with the application No. DM/0516/20/TPO, dated 5 July 2020, subject to the following conditions:
    - 1) The work for which consent is hereby granted shall be implemented within two years of the date of this decision.
    - 2) A Scots pine (*Pinus sylvestris*), of 1.0 - 1.5 metres in height, grown in a container of a minimum volume of 45 litres, shall be planted as a replacement tree in the first planting season following the removal of the pine.
    - 3) The replacement tree shall be planted and supported in accordance with British Standard BS 8545: 2014, Trees: from nursery to independence in the landscape - Recommendations (or equivalent British Standard if replaced), within two metres of the westernmost tree of the row of pines.



- 4) If within a period of five years from the date of planting, the replacement tree (or other tree planted in its place) is removed, uprooted, destroyed or dies, a further tree of the same size and species shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original.

### **Preliminary Matter**

2. The Council issued a split-decision, granting conditional consent for all of the works proposed other than the felling of the pine T4. The appeal is made against the refusal of consent for the removal of this tree.

### **Main Issues**

3. The main issues in this case are:
  - i) The effect of the removal of the pine tree on the character and appearance of the area; and
  - ii) Whether the reasons put forward are sufficient to justify the removal of the tree.

### **Reasons**

#### ***Effect of the removal of the pine tree***

4. The pine is the easternmost tree of an evenly-spaced row of five trees, growing within the extensive grounds of Treyarnon Lodge, which contain numerous trees of a variety of species, including several notable individual specimens. All of the older trees within the grounds are protected by the TPO, as the property stands within the parcel of land scheduled as area A4 of the order.
5. The pines are situated within the section of the grounds to the south of the main house and the row is orientated along the east - west axis. Whilst four of the trees are of similar character and stature, the westernmost tree is a smaller and stunted specimen. Given the size of the grounds and extent of tree cover therein, the row is not an especially prominent feature of the local landscape although, collectively, the pines do contribute to the pleasant, well-treed character of the property.
6. I found the pines to be most visible from Ford's Avenue to the west. However, as the subject tree is on the eastern end of the row its loss would not be apparent from this vantage point. There are partial views of the tree from the public park to the south-west and it is no doubt visible to varying degrees from a number of the rear gardens of the dwellings on Radcliffe Road and Nicholson Road to the south, although I am unsure whether the loss of the tree would be particularly apparent from these properties. Overall, I consider that the harm to the character and appearance of the area resulting from the removal of the pine would be minimal, and insufficient to preclude the work proceeding subject to sufficient justification having been demonstrated for this course of action.

### ***Reasons put forward for the removal of the pine tree***

7. Being the end specimen of the row, the pine has developed a heavily asymmetrical crown and is growing with a discernible lean to the east, away from the neighbouring trees. Whilst there were no indications that the tree is imminently unstable, it appeared that it must have suffered some root loss during the construction of the floor slab for the adjacent pool building. The tree's roots have lifted the concrete path to the west and are disrupting the paving to the east, but this did not appear to be as a consequence of the root plate heaving.
8. There is a major fork at the base of the tree's crown, with an ascending limb on the north-eastern side extending over the roof of the adjacent summer house. This limb is heavily end-weighted, with the foliage bearing growth concentrated at the outer end, increasing its susceptibility to wind or snow-related damage. It was evident that the outer section of a heavy low limb on the eastern side had broken out some time ago.
9. The decision notice suggests that an application could be made to reduce the canopy spread as an alternative to removing the tree. Pines do not typically lend themselves to such pruning and I do not consider this to be a particularly appropriate or desirable option in this instance.
10. With any application to fell a protected tree, a balancing exercise needs to be undertaken. In this instance, I found the tree to be ill-suited to its setting, with regard to its proximity to the adjacent structures, and whilst the pine did not appear to be imminently unstable, I believe the concerns over its safety are legitimate. Taking into account all of the foregoing matters, both individually and in combination, I find there to be sufficient justification for the felling of the pine, and this outweighs the minimal harm to the character and appearance of the area that will result from its loss.

### **Conditions**

11. In order to maintain the level of tree cover within the area and in response to the Council's request, I have imposed conditions requiring a further Scots pine to be planted as a replacement for the tree to be removed, for the preparation and planting of the replacement tree to be carried out in accordance with industry standards, and for a further tree to be planted in place of the original replacement, should this prove necessary.

### **Conclusions**

12. In view of my decisions on the main issues, I have concluded that there is sufficient justification for the removal of the pine tree and grant consent for this work, subject to a replacement planting condition.

*Mick Boddy*

Inspector



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## Appeal Decisions

Site visit made on 10 May 2021

by **I Radcliffe BSc(Hons) MRTPI MCIEH DMS**

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

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### Appeal A - Ref: APP/TPO/B2002/7634

#### 94 Station Road, Great Coates, Grimsby DN37 9NN

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against refusal to grant consent to fell trees protected by a Tree Preservation Order.
  - The appeal is made by Mr A Randell against the decision of North East Lincolnshire Council.
  - The application Ref: DM/0679/19/TPO, dated 21 July 2019, was refused by notice dated 17 September 2019.
  - The work proposed is the felling of seven pines (T1 to T3 & T15 to T18).
  - The relevant Tree Preservation Order (TPO) is The County of Lincoln, Parts of Lindsey Tree Preservation (Great Cotes) Order 1966, which was confirmed on 9 September 1966.
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### Appeal B - Ref: APP/TPO/B2002/7875

#### 94 Station Road, Great Coates, Grimsby DN37 9NN

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against refusal to grant consent to fell trees protected by a Tree Preservation Order.
  - The appeal is made by Mr A Randell against the decision of North East Lincolnshire Council.
  - The application Ref: DM/0120/20/TPO, dated 9 February 2020, was refused by notice dated 6 April 2020.
  - The work proposed is the felling of eleven pines (T1 to T3, T5 to T8 & T15 to T18) and one sycamore (T4).
  - The relevant Tree Preservation Order (TPO) is The County of Lincoln, Parts of Lindsey Tree Preservation (Great Cotes) Order 1966, which was confirmed on 9 September 1966.
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### Decisions – Appeals A & B

1. The appeals are dismissed.

### Main Issues

2. The main issues in both appeals are:
  - the amenity value of the pines and the likely effect of the proposed felling; and,
  - whether sufficient justification has been provided for the proposed felling.

### Preliminary matters

3. Both appeals have been dealt with by way of the fast track written representations procedure. As explained in section E of the appeal form, this means that the appeals are determined on the basis of only those matters that

were before the local authority when the decision on the application was made. As a result, in relation to Appeal A, reference introduced at appeal stage regarding the design of the root barrier and cracks in the wall of the house has not been taken into account in the determination of that appeal.

4. In relation to Appeal B, the Council issued a split decision. It granted consent for the felling of one pine (T18) and refused consent for the felling of the other eleven trees. Since the decision notice was issued the pine (T18) has been felled. The sycamore (T4) at 92 Station Road has also been felled following the grant of a separate consent. In Appeal B, it is therefore the refusal to grant consent for the removal of ten pines at 94 Station Road that the appeal relates to. As a result of the felling of T18, in Appeal A the appeal therefore relates to the removal of six pines. I have determined the appeals on this basis.
5. The description of the property given in this decision is based on the viewer standing in front of the house.

## **Reasons**

### **Appeals A & B**

#### *Amenity value of the pines and the likely effect of the proposed felling*

6. The pines that are the subject of both appeals are located as part of a long group of approximately 37 pines that runs along the right side of the semi-detached house at 94 Station Road, from the front garden along its side boundary to the rear of houses on Ferndown to the south east. This group of trees is identified as G9 in the Tree Preservation Order (TPO).
7. Station Road and Ferndown are located within Great Cotes Conservation Area. The statutory test in relation to conservation areas is that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. In assessing the Conservation Area, I have taken into account the views of the parties, the draft status of the Conservation Area Appraisal and my own observations. Great Cotes Conservation Area is characterised by brick built houses with slate or clay tiled roofs in a verdant setting. Its special interest is historical and architectural and relates to a concentration of large houses and smaller dwellings from the early part of the twentieth century and earlier. Green open spaces and mature trees are an important part of its character.
8. In keeping with the other trees that I saw within the group, the pines in both appeals are tall mature trees with a columnar form. With the exception of T10, which is showing signs of decline in its upper canopy, each of the trees are vigorous, and appear to be in good health and structurally sound, with little, if any, deadwood apparent.
9. Dominating Station Road as it turns away from Woad Lane this group of trees forms an important landscape feature in public views from Station Road and Ferndale to the rear that contributes to the character and appearance of the Conservation Area. This group of trees is therefore of very high amenity value.
10. In Appeal A, the felling of trees T1 to T3 in the rear garden would create an additional break in the group of trees, adding to the one created by the construction of Ferndale, materially diminishing the amenity value of the group. The felling of trees T15 to T17 in the front garden would reduce the width of

the group at its most visible point from three trees to two and have a similar adverse effect. In Appeal B, the additional removal of trees T5 to T8 harm would exacerbate the harm that I have described.

11. The replacements for the felled trees would take many years to grow large enough to begin to compensate for the adverse effects caused to the character and appearance of the Conservation Area. As a result, any reasons to justify removal of the trees needs to be compelling.

*Whether sufficient justification has been provided for the proposed felling*

### **Appeal A**

12. The trees within the back garden of No 94 are located along its right (western) side boundary. As a result, especially in the summer months when the sun is high in the sky, the high elevated canopies of the pines T1 to T3 place the rear garden in the shade from around midday to late in the day. It is stated that this results in problems with moss in the lawn and prevents the occupiers of No 94 from being able to enjoy the back garden. Protected trees though should not be felled merely for these reasons.
13. It was clear from the site visit that the rear lawn is well cared for and largely clear of moss. This indicates that it receives adequate levels of sunlight. In terms of overshadowing, the three pines only start to place the rear garden in the shade in the latter half of the day. Moreover, with the recent felling of the sycamore (T4) along the western side boundary of the garden a gap exists between the pines. During the summer months, late in the day, this gap is likely to allow sunlight to shine first on the side garden and then on part of the rear garden.
14. In between these times it is clear from the submitted photographs that the trees do not block out the sun completely over the garden. Instead, they create an attractive dappled effect of sunlight and shade which adds to the amenity value of the trees and which in the hotter summer months provides protection from the sun. During cooler, sunny weather the trees will limit warmth from the sun in the garden. However, this is to be expected where trees provide shade and does not result in material harm to the amenity value of the garden. As a result, I give the overshadowing effect of the trees on No 94 minimal weight in favour of the proposed felling.
15. The drive that provides access to the house at No 94 passes close to the pine trees in the front garden. The roots of the pines have broken through the tarmac surface of the drive leaving it in an uneven condition. However, in the absence of technical evidence from an appropriate expert that considers possible drive surfacing solutions to accommodate the tree roots, I am not persuaded that it is inevitable that a new drive would similarly deteriorate. Given that driveway maintenance is a normal part of property upkeep, if the condition of the driveway is addressed it will not detract from the value of the property. As a result, this tree root damage is a consideration of little weight in favour of the appeal.
16. Following a tree report from an engineer in 1994 a root barrier was installed to protect the house. On the basis of the site visit, it appears to me that the course of the root barrier follows that shown on the submitted hand drawn plan that formed part of that report, with the large roots that have lifted the

driveway extending into the lawn but not past the curved line of the root barrier.

17. The appellant states that bird droppings, sap and pine cones falling from the trees prevents use of the driveway for car parking. The canopies of the pine trees extend over the drive from its junction with the road to within a few metres of the house. As a result, if there is more than one car parked on the drive it will be parked beneath the trees and will be exposed to what falls from them.
18. Bird droppings, falling sap and the shedding of seeds and cones though is a normal and expected feature of trees. I saw little evidence of significant bird droppings on the drive, or on the lawn beneath the trees, and falling sap is seasonal. Moreover, both can be removed by washing. No evidence has been provided that fallen pine cones have damaged vehicles. I therefore attach minimal weight to this matter in support of felling.
19. It seems to me that people living in a pleasant and attractive area with large trees must accept that trees are an integral part of that environment. If this is not the case, and the trees that people object to are felled due to the litter that falls from them, the result will be a gradual erosion of the quality of the character and appearance of such areas.

## **Appeal B**

20. Following movement affecting the house due to the moisture draining effect on the subsoil of the protected trees, a root barrier was installed in the mid-1990s to protect the dwelling. As a result of fine cracks visible in 2019 internally and externally on the right, unattached side of the house between the kitchen and the landing above, a claim assessment report was prepared in October of that year for the insurers of the home. It classified the cracks, on a scale of 0 to 5 as Category 1 (Very Slight) due to their narrow width (0.1-1mm) and found that the cracks were indicative of subsidence due to clay shrinkage.
21. Bore holes were subsequently drilled along the side of the house at either end. The analysis of the bore hole by the front right hand corner of the house identified numerous fine pine roots and a bore hole by the rear right hand corner extension identified numerous fine sycamore roots.
22. In this appeal a further document, namely a schedule of works and specification for the root barrier dating from 1995, has been submitted. It shows the line of the root barrier running down the inside of the drive. However, on the basis of large tree roots extending into the front garden as far as a curved line in front of the house, it appears to me that the barrier was installed in accordance with that shown on the submitted hand drawn plan that formed part of that 1994 Tree Report. Even if this is not the case, as the only sign of movement to the front elevation is historic and limited to the right side of the front door, there is no evidence that tree roots found in the front borehole have caused any movement to the front elevation of the house since the root barrier was installed. Accordingly, it appears to me that the root barrier that was put in place over 20 years ago is intact and that the roots seen in the bore holes are as a result of the barrier being overtopped.
23. Since the claim assessment report, as I have noted procedurally, one of the implicated pine trees nearest to the front corner of the house (T18) and the

only sycamore, which was on the side boundary within the rear garden of No 92 next door, have been felled. In the absence of ongoing monitoring to determine whether this has reduced the seasonal movement of clay subsoil to the extent that cracks to the house have not widened to a harmful extent, I am not persuaded that a need for further felling has been adequately demonstrated.

24. Damage to drains is predominantly confined to that part of the rear elevation of the dwelling that is enclosed by the house and located furthest away from the majority of the trees. The submitted camera surveys do not refer to the presence of any tree roots in the damaged drains. Given these considerations, in the absence of substantive evidence to the contrary, I'm not persuaded that the trees are responsible for the drain damage.
25. At 92 Station Road, adjacent to the side boundary along which the pine trees are located, is a garage that is exhibiting signs of movement. This movement though appears to be longstanding. In the absence of a report assessing the cause of the movement, whether it is ongoing and possible solutions, it is premature to conclude that pines along the side boundary should be felled as a result. Consequently, this is a consideration to which I attach little weight in favour of the appeal.

### **Conclusion – Appeals A & B**

26. In dealing with an application to fell protected trees, a balancing exercise needs to be undertaken. The justification for the felling must be weighed against the resultant loss to the amenity of the area. In both appeals, the proposed felling would have a demonstrably harmful effect on the character and appearance of the area and, in my judgement, the points put forward to justify the removal of the trees in both appeals falls short of outweighing the harm that would be caused.
27. Accordingly, for the reasons set out above, I conclude that both appeals should be dismissed.

*Ian Radcliffe*

Inspector