

Appeal Decision

Inquiry held 18 to 19 October and 25 October 2016

Site visit made on 17 October 2016

by Richard Schofield BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 December 2016

Appeal Ref: APP/N2739/W/16/3144900

Land at Hodgson's Gate, East of Hodgson's Lane, Sherburn in Elmet, Selby LS25 6EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Hodgson's Gate Developments against Selby District Council.
 - The application, Ref 2015/0544/OUT, is dated 19 May 2015.
 - The development proposed is outline application for up to 270 residential dwellings including details of vehicular access (all other matters reserved).
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Decision

1. The appeal is allowed and planning permission is granted for up to 270 residential dwellings including details of vehicular access (all other matters reserved) at Land at Hodgson's Gate, East of Hodgson's Lane, Sherburn in Elmet, Selby LS25 6EN, in accordance with the terms of the application Ref 2015/0544/OUT, dated 19 May 2015, subject to the conditions contained in the Schedule to this decision.

Preliminary Matters

2. Although the Council failed to issue a decision notice in respect of the appealed planning application, a Special Planning Committee meeting was held on 29 June 2016 to discuss it. It was resolved that had the Council been in a position to determine it, the application would have been refused for the following reasons (as précised by me): prematurity, given the lack of need for the appeal scheme at the present time; precedent; uncertainty over the delivery of local supporting infrastructure; and loss of countryside and 'moderately good quality agricultural land' beyond Sherburn in Elmet's development limits.
3. During the course of the Inquiry, the Council conceded that it could not demonstrate a five-year supply of deliverable housing sites and, as such, would no longer be pursuing its putative reasons for refusal. Its planning evidence and viability/market facing evidence was formally withdrawn and it called no further witnesses.

Main Issue

4. On the basis of the information above, the main issue is whether, given its status as an area of safeguarded land, the appeal site should be kept free of permanent development at the present time in order to maintain its availability
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for development in the longer term, having particular regard to the requirements of local and national planning policy on this matter.

5. I have addressed this issue under a number of headings, reflecting the many factors that it encompasses, before reaching an overall conclusion.

Reasons

Housing Land Supply

6. Prior to the Inquiry, it was common ground between the parties that in calculating its five-year supply of deliverable housing sites the Council: had an undisputed shortfall against the delivery of its annual housing requirement since the beginning of the plan period (the Selby District Core Strategy Local Plan (the Core Strategy)) in 2013; should be using the 'Sedgefield' method for delivery going forward; and should add a 20% buffer to both the five year requirement and the shortfall, given 'persistent' under delivery in the past. Based upon all that I have read and heard, I have no reason to depart from this consensus.
7. Dispute in relation to the five-year supply of deliverable housing sites centred upon the deliverability of sites within that supply. Following cross-examination of the Council's planning witness, the Council conceded that a number of sites on which it was relying should not form part of the forward supply and, as such, it was unable to demonstrate a five-year supply of deliverable housing sites. It was agreed that, on this basis, the supply was, at best, 4.6 years.
8. Notwithstanding this, the appellant remained of the view that the supply was considerably less than 4.6 years, chiefly given the Council's continuing reliance on the large brownfield sites of Olympia Park (Selby 9) and the former Rigid Group Site (Selby 33), and windfall sites.
9. With regard to Selby 9 and Selby 33, both have planning permission for residential development and other Inspectors in other appeals (albeit not Inquiries) have found it reasonable to include them in the five-year housing land supply. Nonetheless, on the basis of the evidence presented to me in the context of this Inquiry, I share the appellant's concerns with regard to the continued inclusion of these sites in the Council's forward supply.
10. Selby 9 requires multi-million pound infrastructure investment before development can commence, only some of the funding for which (on the basis of the evidence that I have seen and heard) appears to be available. This is in the form of public sector loans, with the substantial balance to be made up by a private sector developer. In addition, it requires the resolution of a number of legal agreements with a range of landowners to secure access into and across the site. Although assertions were made about 'ongoing discussions' with Keepmoat Homes, there is no evidence before me to suggest that there is any firm developer interest in the site. Indeed, the only negotiations with interested parties to date have come to nothing. It was suggested that the public sector is considering undertaking the infrastructure work itself, with a view to delivering a serviced site to the market. Again, however, there is no evidence before me of any commitment to such a course of action.
11. The Council's projections in relation to the delivery of housing on Selby 9 have slipped consistently since 2013. I do not doubt that the relevant public bodies are being, and have been, proactive in seeking to bring the site forward. On

the basis of the evidence before me, however, I consider the current projection of 125 dwellings being delivered over the extant five-year projection period as being very optimistic.

12. Turning to Selby 33, I was presented with evidence from the landowner's agents¹. This was clear that, as with Selby 9, discussions with the development industry had failed to secure any agreements. Indeed, the agent clearly states that there is '*no market interest at [a] financially acceptable level*' and does not consider that '*an acceptable proposal will be made unless there is a significant improvement in market conditions and values*'. The site has been withdrawn from the market. It is stated that the landowner is considering developing the site alone, but consideration is no indication of certainty. Again, in my judgment on the basis of the evidence before me, I consider that the Council is very optimistic in its reliance on Selby 33 as part of its five-year housing land supply.
13. This being so, I deduct these two sites from the 4.6 year supply noted above. This would give a five-year supply of around 4.3 years. I note that the appellant also questioned the ultimate viability of these two sites. Given my findings above, which touch upon this in broad terms, I do not consider this in any further detail as it is not determinative.
14. With regard to whether it is appropriate for the Council to include windfall sites in the five-year supply, the Core Strategy Inspector's Report and the Core Strategy clearly set the District's housing requirement at 450 dwellings per annum. Both clearly indicate, however, that windfall sites will be mostly additional to this figure rather than an integral part of the supply². Indeed, the Core Strategy is clear that '*the Council has not made any allowance for future contribution from windfalls in calculating the number of dwellings to be provided through new allocations after taking account of existing commitments*' and, thus, that '*windfalls are likely to add to the total delivery of homes, in excess of the planned-for target*³'.
15. There is no policy preventing the Council from including windfalls in its five-year housing supply. Even so, the Core Strategy was clearly formulated in the context of an expectation of allocated sites delivering the 450 dwelling annual requirement, with windfalls acting as an additional source of supply. A '*substantial buffer above the planned-for supply*', as the Core Strategy Inspector's Report states⁴. In this context, it seems to me that the Council's inclusion of a substantial number of windfall dwellings in the five-year supply, while not precluded by policy, must be treated with some caution.
16. I share the appellant's concern that the substantial delay to the progression of a site allocations document⁵ and what appears to be an increasing reliance on windfall sites, as opposed to planned-for allocations, to bolster supply, has given rise to, and appears to be perpetuating, the persistent under delivery of housing in the district. Although I do not consider that windfall sites should be excised from the supply, as there is no clear policy basis to do so, this factor is, in my judgment, a material consideration of some weight in favour of placing

¹ ID 5

² Inspector's Report paragraph 73; Core Strategy paragraph 5.9

³ Core Strategy paragraph 5.9

⁴ Inspector's Report paragraph 73

⁵ Albeit for reasons largely beyond the Council's control

the forward supply on a more certain footing through the release of the appeal site at this time.

17. The appellant also highlighted concerns with the inclusion of a number of other sites in the Council's forward housing land supply. These were not considered in detail at the Inquiry, however, and I do not address them here as, again, the issue is not determinative.
18. Where, as here, a local planning authority is unable to demonstrate a five-year supply of deliverable housing sites, paragraph 49 of the National Planning Policy Framework (the Framework), which is a significant material consideration, indicates that relevant policies for the supply of housing should not be considered up-to-date.
19. This does not, however, lead to an automatic assumption that planning permission should be granted. Rather, paragraph 49 aims to ensure that in situations where, as here, the existing development plan policies have failed to secure a sufficient supply of deliverable housing sites, the '*presumption in favour of sustainable development*' is duly applied.
20. The mechanism for applying that presumption is set out in paragraph 14 of the Framework. This explains that where relevant policies are out-of-date then (unless material considerations indicate otherwise) permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted.
21. This, clearly, does not equate to a blanket approval for residential development in locations that would otherwise have conflicted with development plan policies. If the adverse impacts of the proposal significantly and demonstrably outweigh the benefits, then planning permission should still be refused. This is the decision making process that I have followed here.

Policy context

22. Sherburn in Elmet is defined by Core Strategy policy SP2A(a) as a Local Service Centre (being the second tier in the settlement hierarchy) and, thus, a settlement where further housing growth will take place appropriate to its size and role. Policy SP2B states that land will be allocated for development here, through a Site Allocations Local Plan. The Core Strategy clearly regards Sherburn in Elmet as one of the most sustainable locations for new residential development in the District.
23. Nonetheless, the appeal site lies beyond the development limits of Sherburn in Elmet. Under the terms of Core Strategy policy SP2A(c), land beyond development limits is defined as countryside. Only certain types of development are permitted here, of which the appeal proposal is not one. This being so, given the requirements of policy SP2A(c), the appeal proposal conflicts with the locational requirements of the adopted development plan.
24. In addition, the appeal site is part of a wider area of safeguarded land around Sherburn in Elmet. This is land that was removed from the Green Belt under the Selby District Local Plan 2005 (the Local Plan) to be a '*long term resource*

which may be required for housing or employment growth after 2006⁶. Local Plan policy SL1 states that 'it is intended that the release of safeguarded land, if required, will be carried out in a controlled and phased manner extending over successive reviews of the Local Plan'. Thus, the release of the appeal site for housing at this time would also conflict with Local Plan policy SL1, as the release would not be as part of a review of the Local Plan.

25. These conflicts are matters to be weighed in the planning balance.

Other Matters

Local Infrastructure

26. The alleged lack of local infrastructure to support the development was the main source of objection from the Parish Council and from local councillors representing Sherburn in Elmet. It was also a matter raised by many local residents, with a particular focus on schooling and healthcare provision.
27. The appeal scheme would be captured by the Council's Community Infrastructure Levy (CIL). This would mean that it would be required to pay, what was estimated as being, around £1m⁷ towards an overall fund held by the Council to fund new infrastructure within the District. Such funding could be put towards new healthcare and education provision as required.
28. With regard to the former, there is no objection to the scheme from local GP surgeries or from the Vale of York Clinical Commissioning Group (CCG). Although the latter and South Milford Surgery note current capacity issues, there is no suggestion that they cannot be addressed with the appropriate levels of investment. Indeed, the CCG is clear that there is scope to expand the Sherburn Group Practice and that some of the required funds to achieve this are already in place. These could be supplemented by the CIL receipts accrued by the Council from the appeal scheme.
29. Turning to education, although it raises concerns there is no explicit objection to the proposal from North Yorkshire County Council (NYCC) in its role as the local education authority. There is capacity at the secondary school in Sherburn in Elmet and it is evident that there are solutions to accommodate the increased primary age pupil numbers that would arise from the appeal scheme.
30. I am mindful that the solutions may not be optimal, with NYCC suggesting that a new primary school would be a preferable option, but it is not suggested that they are unachievable. Nor does there appear to be any evidence that an entirely new primary school would be a feasible option anyway, either now or in the longer term, insofar as a potential site for it is concerned.
31. A planned approach to infrastructure delivery is always to be preferred. Nonetheless, the planned approach has failed to deliver the requisite housing allocations and, indeed, seems some way off doing so. As such, given the potential solutions and funding available, these matters do not weigh heavily against the appeal proposal.
32. Constant reference was made to the lack of facilities in Sherburn in Elmet when compared with other settlements in the District such as Selby and Tadcaster. I

⁶ Local Plan para 3.47

⁷ An estimated sum is all that is possible to achieve at present, given the scheme's outline nature.

am also aware of the Core Strategy Inspector's view that there is an '*absence of many key services in the town*' and '*limited opportunities for expanding its small town centre*', which '*militate against greater housing growth unless part of a comprehensive planned expansion*'⁸.

33. It is not, however, clear from the report which 'key services' are absent from the town. It has two primary schools, a secondary school, two GP surgeries, a library, numerous convenience stores (including the presence of four national multiple retailers), a pharmacy, a dentist, a post office and a reasonable bus service. In addition, there is a significant employment zone to the east of the town. Constant reference was made to the need for a fire station, leisure centre and waste recycling facility, but the reasons for this were neither clear nor evidenced.
34. The scope for the town centre to expand may be restricted (albeit that there is no detailed evidence on this matter before me nor is there any clarity over what any expansion would be aiming to accommodate), but this is not unusual in an historic settlement that has grown over time. Many town centres have retail premises in listed buildings, the presence of which is suggested as being problematic, and it is not at all clear from the evidence before me why the alleged constraints to the town centre's expansion should prevent housing growth. It is also evident from the location of the new Aldi in the town that solutions have been found.
35. The absence of public toilets, a reduction in banking facilities and an alleged shortage of telephone kiosks and post boxes are not, in my judgment, matters that weigh significantly against new residential development in Sherburn in Elmet.
36. I also note concerns about an alleged lack of town centre parking but, again, there is no sufficiently detailed evidence before me on this matter such that it would lead me to a view that this is, of itself, reason to refuse planning permission for new residential development.

Highway safety and efficiency

37. In relation to highway safety, NYCC, which is the highway authority, raised no objection to the original planning application, subject to relevant conditions and/or legal agreements.
38. It remains common ground between the parties that the appeal proposal would have no adverse impact upon the highway network and and there is no technical highways evidence before me that would lead me to depart from the agreed views of the main parties in relation to highway safety and efficiency.

Character and appearance

39. The appeal site comprises two, flat unremarkable agricultural fields on the edge of Sherburn in Elmet. It has a mature hedgerow and tree boundary with the A162, which together serve to contain it well within the wider landscape. There is a more gappy hedgerow boundary with Hodgson's Lane to the immediate west. Some hedgerow would be lost to accommodate visibility splays for the access, but new hedgerow and tree planting set further into the site is proposed to mitigate this (as indicated on the Parameters Plan).

⁸ Core Strategy Inspector's Report paragraph 83

40. Extant housing borders the site to the south, and housing on Pinfold Garth to the west is readily apparent from it. As such, the site, although technically open countryside is, in essence, two relatively ordinary, well-contained fields divorced from the wider countryside by the A162 and extant development, which have a significant influence upon its character.
41. There is no dispute that the appearance of the site would change from one of agricultural fields to a housing development. I am not persuaded, however, given the context outlined above, that new development would appear particularly stark or at odds with its surroundings. As such, I do not consider that this change would give rise to significant visual or landscape harm.

Crime

42. It was suggested that crime in Sherburn in Elmet was a problem that would be exacerbated by the appeal scheme. The scheme has been considered by North Yorkshire Police force's Designing Out Crime Officer, who has not objected to it. A number of suggestions have been made in relation to the future design of the scheme, which can be taken into consideration at reserved matters stage.

Drainage

43. Concerns were raised in relation to flooding and sewerage. With regard to flooding, the appellant submitted a Flood Risk Assessment with the original application, which concludes that a drainage scheme could be implemented that would ensure that there would be no increase in surface water run-off and volume from the proposed development. This has been considered by the relevant statutory consultee and no objections have been raised.
44. In addition, Yorkshire Water has considered the scheme, with the submitted Utilities Assessment, and has not objected to it on any grounds. There is no substantive evidence before me that would lead me to doubt the views of Yorkshire Water on this matter.

Impact on recreation

45. Some local residents felt that the appeal scheme would give rise to an increase in dog walking along Hodgson's Lane and, thus, an increase in dog litter. There is no evidence before me to indicate that this would be a problem or that, if it arose, it could not be dealt with appropriately.
46. The loss of the site for recreational purposes was also raised. The site is, however, private agricultural fields and, while there appeared to be a permissive route around the top field, has no public right of access as a recreational area.
47. It was also suggested that the town had insufficient play areas for children. The scheme would, however, include open space, upon which a play area would be situated, secured by a planning obligation.

Disturbance during development

48. There would be some disturbance to existing residents during the construction phase, in relation to noise and, potentially, dust. This would, however, be temporary and hours of work and deliveries could be controlled by condition.

Loss of property values

49. There is no evidence before me to suggest that the appeal proposal would have any adverse impact upon the value of property around the site.

Living conditions

50. There is no doubt that the outlook from the dwellings to the immediate south, west and east of the appeal site would change as a result of the proposed development. Change, however, does not automatically mean harm and there is no right to a view. Given their proximity to the appeal site, particular and careful attention would need to be paid to the juxtaposition between Nos 2 and 4 Hodgson's Lane, the dwellings to the east of site (accessed from Moor Lane) and any new buildings on the appeal site. I am satisfied, however, that any new buildings on the site, if appropriately scaled and located, would not be oppressive upon the outlook of the occupiers of extant dwellings.
51. Similar attention would need to be paid to the relationship between any new buildings and the rear gardens of the dwellings on Moor Lane, which back onto the site. Again, however, I see no reason why a satisfactory relationship could not be achieved, with particular attention paid to ensuring that outlook from the rear gardens of these extant dwellings is not compromised by overly tight positioning of new development.

Impact on gas main

52. It is suggested that the appeal proposal would have an adverse impact upon the gas main that crosses the site. There is not, however, an objection before me from the relevant utility provider in relation to this matter, subject to the provision of an easement, which is a private matter. The Health and Safety Executive, which responded to the original consultation, has made no comment. As such, I have no reason to consider that there is likely to be any danger to the integrity of the gas main.

Ecology

53. The appellant submitted an Ecological Appraisal with the application, supplemented by a revised report that included further protected species surveys. The reports concluded that, other than the mature hedgerows, which are to be retained and would be enhanced, the site comprises generally species poor habitats. It makes a number of recommendations to secure biodiversity enhancements and ensure suitable mitigation is in place.
54. The most up-to-date correspondence from the Yorkshire Wildlife Trust (YWT) cites a holding objection, but this appears to be predicated on the absence of a detailed mitigation plan for the site. This could, as YWT suggests, be secured by condition, which would address its concerns.

Precedent

55. The issue of precedent was raised by a number of parties. My decision in this appeal should not be interpreted as a finding that Sherburn in Elmet is necessarily a 'sustainable location' for residential development *ad infinitum*. Indeed, any future proposals would need to be assessed on their own site-specific merits, in the context of any development plan and national policy then in place. While I have concluded that the appeal scheme is acceptable, given

the site context and housing land supply situation, the fact that up to 270 dwellings have been allowed on appeal in Sherburn in Elmet would be a consideration to be weighed in the balance when considering any future development proposals.

Prematurity

56. The Framework places considerable emphasis on a plan-led system, which seeks to select the most appropriate sites for development. I am not unsympathetic to the view that future residential development sites in Sherburn in Elmet ought to be considered in the round, through PLAN Selby. However, the Government's Planning Practice Guidance is clear that refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination⁹. PLAN Selby is some way off completion and has already slipped from the timetable set out in the current Local Development Scheme. I am not persuaded, therefore, that it can be regarded as being at an advanced stage, such that the grant of planning permission for the appeal scheme could be considered to undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to PLAN Selby.

Green Belt

57. Although the appeal site is on safeguarded land, the roundabout on the A162 proposed for the new access would be situated in the Green Belt. There is no dispute that, under the terms of the Framework¹⁰, the works would be an engineering operation. Such operations are not inappropriate development in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within the Green Belt.

58. There would be no conflict with the five purposes that Green Belt serves, as set out in paragraph 80 of the Framework. With regard to openness, this is generally regarded as an absence of development. The works would be undertaken within the highway boundary of the A162, resulting in changes to the existing carriageway to incorporate the roundabout and pedestrian/cycle access. In essence, this would result in the carriageway becoming wider, but not to a significant degree. In my judgment, any impact upon openness would be marginal at worst.

59. This being so, I consider that the proposed access works would be not inappropriate development in the Green Belt.

Planning Obligations

60. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the Regulations) requires that if planning obligations are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.

61. A S106 agreement was submitted by the appellant. An agreed statement was submitted by the parties in relation to the proposed obligations detailed in the S106 agreement, setting out the reasons for them, their relationship with the

⁹ Paragraph 014 Reference ID: 21b-014-20140306

¹⁰ Paragraph 90

proposed scheme and how any costs were reached. I am satisfied, on the basis of this information, of the Transport Statement of Common Ground and of the supporting planning policy information that the obligations in relation to affordable housing, waste and recycling, on-site open space, off-site highways works and Travel Plan monitoring satisfy the relevant CIL regulation requirements.

Conditions

62. A list of proposed planning conditions was discussed at the Inquiry. I have made amendments in the light of those discussions. This is to improve precision, clarity and enforceability, as well as to avoid overlap.
63. The conditions specifying the reserved matters, the time limits for submission of reserved matters and commencement of development, compliance with the approved plans, and that defining the number of dwellings permitted, are necessary to ensure legal compliance and/or to provide certainty.
64. A condition tying the reserved matters application to the DAS and Parameters Plan is necessary in the interests of character and appearance. A condition in relation to housing mix is necessary in the interests of ensuring a mixed and balanced community in line with the ambitions of the Framework. That relating to an archaeological scheme of investigation is necessary in the light of the potential for historic remains being found on the site. Conditions relating to offsite highway works, internal highway construction, parking/turning areas, garage conversions and window/door openings over the highway are necessary in the interests of highway safety and efficiency. The Travel Plan condition is necessary to ensure that opportunities for non-car related modes of transport from the site are maximised, in line with national and local planning policy. That relating to noise is necessary in the interests of ensuring appropriate living conditions for any future occupiers. A condition relating to contamination investigation, and remediation as necessary, is required given the potential for contamination in light of the past agricultural use of the site. An ecological/landscape management condition is required to ensure that appropriate ecological protection, mitigation and enhancement is secured in line with agreed recommendations. A Construction Management Plan condition is necessary to ensure that there is no adverse impact upon the living conditions of the occupiers of surrounding dwellings or the local highway network during construction. Drainage conditions are required to ensure that the site is properly drained.
65. The condition relating to the buffer strip along Bishops Dike is necessary to ensure access is retained for future maintenance purposes and in the interests of retaining ecological connectivity through the site. That relating to energy supply is necessary to ensure compliance with policy SP16 of the Core Strategy.
66. The proposed condition relating to a highway survey is unnecessary given that it can be addressed through a S278 agreement.

Planning Balance and Conclusion

67. The appeal scheme would bring about social benefits through the delivery of market and affordable housing¹¹ in a District with an acknowledged shortfall of both. In my judgment, this is a benefit that should be afforded significant weight.
68. In environmental terms, no significant harm has been established and it may be that there is some gain in biodiversity from the proposed landscaping and specific ecological initiatives. I give this moderate weight.
69. It is suggested that new public open space would be a benefit, but as this appears to be a policy requirement designed to ensure that new residents have access to recreational space, which one would expect of all sizeable new residential developments, I afford it little weight.
70. It is further suggested that the scheme would offer benefits by being of a high quality that respects the character of the settlement. This is, however, a basic expectation of any new residential scheme and, as such, attracts little weight.
71. Turning to the economic dimension of sustainability, the Government has made clear its view that house building plays an important role in promoting economic growth. In economic terms, the appeal scheme would provide construction jobs and some local investment during its build out, as well as longer term expenditure in the local economy. Moderate weight should be afforded to this benefit.
72. The development would also generate New Homes Bonus (NHB), Council Tax and Community Infrastructure Levy (CIL) receipts for the Council. As the NHB is an incentive for local planning authorities to provide housing on suitable sites; Council Tax and CIL are essentially a means for the Council to cover its costs and infrastructure needs arising from an increased local population; and no direct beneficial link between the spend of the NHB and Sherburn in Elmet has been established, I do not consider that these matters attract weight as benefits in the planning balance.
73. Weighed against these benefits is the fact that the appeal scheme would conflict with the development plan, insofar as it does not meet with the criteria of Core Strategy policy SP2A(c) and Local Plan policy SL1. However, the weight to be given to this conflict is necessarily reduced, in my judgment, by the Council's inability to demonstrate a five-year supply of deliverable housing sites. The Framework is clear that where this situation arises, relevant policies for the supply of housing should not be considered up-to-date. Policies setting development limits and relating to safeguarded land are, in my judgment, relevant policies for the supply of housing. Although Green Belt land might be considered differently in the context of footnote 9 to paragraph 14 of the Framework, safeguarded land is not explicitly referenced here.
74. Notwithstanding these specific conflicts, the appeal scheme would broadly conform to the Core Strategy's overall strategy, given its identification of the Local Service Centres as suitable locations for development. There is also a clear recognition by the Council, given the number of planning permissions for residential development that it has granted on sites outwith development limits

¹¹ The appellant confirmed that there were no viability issues that would give rise to a reduction in the agreed policy compliant 40% affordable housing provision.

in the District, that the development limits need to be 'flexed' to accommodate housing growth until a time when they can be reconsidered in the context of a revised development plan. This recognition must, in my judgment, reduce further the weight to be attributed to the conflict with the development plan in this regard.

75. In addition, the appeal site was safeguarded some 11 years ago as a resource for accommodating residential growth beyond 2006. It has been kept free of permanent development all of this time and its release now reflects the changed circumstances in the District with regard to the slow delivery of new residential development to meet a new housing requirement. Its release is made on the basis of carefully considered arguments and an assessment of local housing need. In line with policy SL1, this would be a controlled release and would be phased inasmuch as a very considerable amount of safeguarded land would still remain in the District for future release as appropriate.
76. As such, and in the specific circumstances set out above, I conclude that given its status as a parcel of a larger area of safeguarded land, it is not necessary for the appeal site to be kept free of permanent development at the present time in order to maintain its availability for development in the longer term, having particular regard to the requirements of local and national planning policy as set out above.
77. Even so, it seems to me that the appeal scheme would conflict with the development plan when taken as whole. Nonetheless, as noted above, the Framework, which is a significant material consideration, makes it clear that where the plan-led system is not delivering the required levels of housing, housing should be permitted unless the real world land use planning impacts of doing so significantly and demonstrably outweigh the benefits that housing may deliver.
78. Given my considerations above, I find that there are significant material considerations that indicate that planning permission should be granted, warranting a decision other than in accordance with the development plan. I find that the limited adverse impacts of the appeal scheme would not significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would represent a sustainable form of development and, for the reasons given above, and taking all other matters into consideration, I further conclude that the appeal should be allowed.

Richard Schofield

INSPECTOR

APPEARANCES

FOR THE COUNCIL:

Mr Alan Evans of Counsel

Instructed by Selby District Council

He called:

Mr David Sykes

David Sykes Planning Consultancy

FOR THE APPELLANT:

Miss Mary Cook of Counsel

Instructed by Indigo Planning

She called:

Mr Bruce Owen

Owen Land and Property

Mr Doug Hann

Indigo Planning

INTERESTED PERSONS:

Cllr Paul Doherty (Chair - Sherburn in Elmet Parish Council)

Cllr David Buckle (Sherburn in Elmet Parish Council; Selby District Council)

Cllr Melvin Hobson (Sherburn in Elmet Parish Council; Selby District Council)

Cllr Robert Packham (Sherburn in Elmet Parish Council; Selby District Council;
North Yorkshire County Council)

INQUIRY DOCUMENTS

SUBMITTED DURING PROCEEDINGS

- 1) Revised draft S106 agreement
- 2) Joint Statement on Education and Healthcare facilities in Sherburn in Elmet
- 3) Opening statement for the appellant
- 4) Opening statement for the Council
- 5) Email from Titchmarsh and Co, agents for the Rigid Group site, dated 18 October 2016
- 6) Bundle of emails relating to sites in the Council's five-year housing land supply, 18 October 2016
- 7) Further bundle of emails relating to sites in the Council's five-year housing land supply, 18 October 2016
- 8) Letters from South Milford Surgery, dated 18 October 2016, and North Yorkshire Clinical Commissioning Group, dated 15 September 2016, with regard to healthcare facilities in Sherburn in Elmet.
- 9) Appellant's note on the Council's Five-Year Housing Land Supply following Mr Sykes' Cross Examination
- 10) Official copies of registers of title to the appeal site
- 11) Table outlining sites within the Council's published five-year housing land supply report (August 2016), which lie beyond the Development Limits
- 12) Appellant's summary tables on the District's five-year housing land supply position, 21 October 2016
- 13) Statement of Compliance with CIL Regulations
- 14) Revised list of conditions
- 14) Closing Submission for the Appellants

RECEIVED FOLLOWING THE CLOSE OF THE INQUIRY

- 15) Copy of the executed S106 with Deed of Variation

SCHEDULE OF CONDITIONS

1. Details of the layout, scale, appearance and landscaping, including boundary treatments (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the details contained within the following plans: Site Location Plan (Drawing no. 6723-L-01 rev A); and Proposed Access Arrangement Plan (Drawing no. SK21125-001 rev A).
5. The development hereby permitted shall be carried out in accordance with the principles and parameters set out in the submitted Design and Access Statement and the Parameters Plan (6723-L-04 Rev B).
6. The total number of dwellings authorised by this permission shall not exceed 270 and any reserved matters application(s) submitted pursuant to conditions 1 to 3 shall be limited to this maximum in total.
7. No dwelling on any phase shall be occupied until at least 10% of the energy supply of the development for that phase has been secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be first submitted to and approved in writing by the Local Planning Authority. Works shall thereafter be implemented in accordance with the approved details and timetable and retained, maintained and operated thereafter.
8. No development on any phase shall take place until details of the proposed means of disposal of foul water drainage, including details of any balancing works and off-site works for that phase, have been submitted to and approved by the Local Planning Authority. No buildings shall be occupied or brought into use prior to completion of the approved foul drainage works for the relevant phase.
9. The development shall incorporate a 7 metre undeveloped buffer strip adjacent to Bishop Dike for its full length across the site.
10. No development on any phase shall take place until a detailed design and associated management and maintenance plan for surface water drainage for that phase has been submitted to and approved in writing by the Local Planning Authority. The design and plan shall be based on sustainable drainage principles in accordance with: the recommendations of the submitted Flood Risk Assessment (Weetwood, May 2015); standards detailed in North Yorkshire County Council SuDS Design Guidance; and an

assessment of the hydrological and hydrogeological context of the development.

The surface water drainage design should demonstrate that the surface water runoff generated during rainfall events up to and including the 1 in 100 years rainfall event, to include for climate change and urban creep, will not exceed the run-off from the undeveloped site following the corresponding rainfall event.

The approved drainage system for the relevant phase shall be implemented in accordance with the approved detailed design prior to first occupation of any dwelling in that phase.

11. No development shall take place until an Ecological Management Plan (EMP) for the site has been submitted to and approved in writing by the local planning authority. The EMP shall be produced in accordance with the recommendations of the submitted Ecological Appraisals by FPCR, dated May 2015 and July 2015, and the letter from Indigo Planning to Selby District Council, dated 22 October 2015 (let.072.JC.LM.20220001), with particular regard to retained trees and hedgerows, new planting, lighting and the buffer zone along Bishops Dyke. Development and maintenance shall thereafter be carried out in accordance with the approved EMP.
12. No development shall commence until a Written Scheme of Archaeological Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions and:
 - the programme and methodology of site investigation and recording;
 - provision for community involvement and/or outreach proposals;
 - the programme for post investigation assessment;
 - provision to be made for analysis of the site investigation and recording;
 - provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - provision to be made for archive deposition of the analysis and records of the site investigation;
 - nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the approved Written Scheme of Archaeological Investigation.

13. There shall be no excavation or other groundworks on any phase, except for investigative works or the depositing of material on the site, until the following drawings and details for that phase have been submitted to and approved in writing by the Local Planning Authority:
 - a) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:
 - the proposed highway layout including the highway boundary;

- dimensions of any carriageway, cycleway, footway, and verges;
- visibility splays;
- the proposed buildings and site layout, including levels;
- accesses and driveways;
- drainage and sewerage system;
- lining and signing;
- traffic calming measures
- all types of surfacing (including tactiles), kerbing and edging.

b) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:

- the existing ground level;
- the proposed road channel and centre line levels;
- full details of surface water drainage proposals.

c) Full highway construction details including:

- typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths;
- cross sections where requested at regular intervals along the proposed roads showing the existing and proposed ground levels;
- kerb and edging construction details;
- typical drainage construction details.

d) Details of all proposed street lighting.

e) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.

f) Full working drawings for any structures which affect or form part of the highway network.

g) A programme for completing the works.

The development shall only be carried out in full compliance with the approved drawings, details and programme.

14. No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with any agreed street lighting installed and in operation.

15. There shall be no excavation or other groundworks, except for investigative works or the depositing of materials on the site in connection with the construction of the access road or buildings or other works until:
- i) The details of the required highway improvement works listed below, have been submitted to and approved in writing by the Local Planning Authority;
 - ii) An independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 – Road Safety Audit or any superseding regulations; and
 - iii) A programme for the completion of the proposed works has been submitted and approved.

The required highway improvements shall include:

- Roundabout access on the A162 in broad accordance with plan ref Sk21125-001 Rev A;
 - Dropped kerb crossings/tactile pavements in the vicinity of Hodgson's Lane/Moor Lane; and
 - Improvements to the A162/A63 roundabout in broad accordance with plan ref P8576-GA-01-D.
16. There shall be no vehicle movements between the highway and the application site, except for the purposes of constructing an initial agreed site access, until that part of the access extending 20 metres into the site from the carriageway of the existing highway has been made up and surfaced in accordance with the details first approved in writing by the local planning authority.
17. No dwelling shall be occupied until its related parking facilities have been constructed in accordance with details which have been first approved in writing by the Local Planning Authority. Once created these parking areas shall be retained thereafter for their intended purpose.
18. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 or any subsequent Order, any garages constructed under this permission shall not be converted into domestic accommodation without the granting of an appropriate planning permission.
19. All doors and windows on elevations of any buildings adjacent to the existing and/or proposed highway shall be constructed and installed such that from the level of the adjacent highway for a height of 2.4 metres they do not open over the public highway and above 2.4 metres no part of an open door or window shall come within 0.5 metres of the carriageway. Any future replacement doors and windows shall also comply with this requirement.
20. No development shall take place including the establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction of the site until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include, amongst other things, details of:
- hours of work at and deliveries to the site;

- access and routing arrangements for construction and delivery vehicles;
- contractor and visitor parking areas and compounds, including storage areas for plant and materials;
- specification of plant and equipment to be used;
- details of wheel washing facilities to ensure that mud and debris is not spread onto the adjacent public highway;
- loading and unloading areas;
- means of minimising dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development;
- an undertaking that there shall be no burning of materials on site at any time during construction;
- details of any piling required, including a schedule of works, plots affected, method (to minimise noise, dust and vibrations), duration and prior notification to affected neighbouring properties;
- overall monitoring methodology; and
- details of the responsible person (site manager/office) who can be contacted in the event of a complaint.

The approved CMP shall be adhered to throughout the construction period.

21. Prior to first occupation of the development hereby permitted, a Travel Plan shall be submitted to and approved in writing by the local planning authority and will include:

- Targets for sustainable travel arrangements;
- Effective measures for the on-going monitoring and review of the travel plan;
- A commitment to delivering the travel plan objectives for a period of at least five years from first occupation of the development; and
- Effective mechanisms to achieve the objectives of the travel plan by both present and future occupiers of the development.

The Travel Plan shall thereafter be implemented in accordance with its agreed timetable and details.

22. Prior to construction of any dwellings hereby approved a scheme for the protection of the occupiers of the dwellings hereby permitted from road traffic and industrial noise shall be submitted to and approved in writing by the Local Planning Authority.

The scheme shall demonstrate that the noise level in the garden areas of the proposed development shall not exceed 50dB LAeq (16 hour) between 0700 hours and 2300 hours and all works which form part of this scheme shall be completed before any affected part of the development is occupied.

The scheme shall also ensure that the building envelope of each dwelling is constructed so as to provide sound attenuation against external noise. The internal noise levels achieved should not exceed 35 dB LAeq (16 hour) inside each dwelling between 0700 hours and 2300 hours and 35 dB LAeq (8 hour) and 45 dB (LAm_{ax}) in the bedrooms between 2300 and 0700 hours. This

standard of insulation for each affected dwelling hereby approved shall be completed before that dwelling is occupied.

The works provided as part of the approved schemes shall be permanently retained and maintained throughout the life of the development.

23. No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority for approval in writing within 5 days of the report being completed.

24. Notwithstanding the indicative proposals submitted with planning application 2015/0544/OUT, the mix of any market housing authorised by this planning permission, including details of size and type, shall be agreed in writing by the local planning authority as part of any reserved matters application(s) relating to layout and scale. Development shall thereafter be implemented only in strict accordance with the approved mix.