

Appeal Decision

Site visit made on 28 November 2016

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 28 December 2016

Appeal Ref: APP/N2739/W/16/3151448
Land North of Weeland Road, Eggborough

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Glade Developments Ltd against the decision of Selby District Council.
 - The application Ref 2016/0124/OUT, dated 8 February 2016, was refused by notice dated 9 May 2016.
 - The development proposed is outline application for up to 34 residential dwellings, with all matters reserved except for access.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 34 residential dwellings, with all matters reserved except for access on land north of Weeland Road, Eggborough in accordance with the terms of application Ref 2016/0124/OUT, dated 8 February 2016 and in accordance with the 11 conditions in the attached Schedule.

Procedural Matters

2. The application was submitted in outline and the planning application form makes it clear that approval is being sought for access at this stage. I have treated the submitted layout plans as indicative only.
3. A completed Section 106 Agreement dated 27 September 2016, was submitted with the appeal. This is considered later in my Decision.
4. At the time that the Council determined the planning application, it considered that it was able to demonstrate a 5 year supply of deliverable housing sites. However, during the course of the appeal, the Council confirmed that it was unable to demonstrate such a supply. This is considered later in my Decision.

Main Issues

5. The main issues in this case are the effect of the proposal on:
 - the spatial development strategy for the area, having particular regard to the location of the site; and
 - the character and appearance of the area.
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Reasons

Spatial Development Strategy

6. Policy SP2 of the Selby District Core Strategy Local Plan (CS) sets out the spatial strategy for future development within the district. It states that the majority of new development will be directed to towns and more sustainable villages. Eggborough/Whitley is identified within this policy as a Designated Service Village (DSV) where there is scope for additional residential and small-scale employment growth to support rural sustainability.
7. Both parties agree within the submitted Statement of Common Ground that the site is located outside of the defined development limits as shown on the Selby Local Plan (LP) Proposals Map. The site is therefore within the countryside for planning policy purposes. Outside of development limits, in the countryside, part A of CS Policy SP2 limits new development. This broadly reflects the advice in paragraph 55 of the National Planning Policy Framework (the Framework). The proposal for new residential development upon the site would not fall within any of the exceptions set out in either the Framework or the CS. As such there would be conflict with CS Policy SP2 in this regard.
8. Although not referred to within the Council's decision notice, its evidence makes reference to CS Policy SP5. This policy sets out indicative target for new housing delivery in settlements. DSVs are not identified individually under this policy. However, the table which forms part identifies a requirement of a minimum of 2000 dwellings being required for such villages during the CS plan period (2011-2027). The Council is concerned that taken with existing commitments in Eggborough and Whitley since 2011 (240 dwellings have been built or approved in these settlements (not 289 as indicated within the Council's refusal reason)), the proposal would lead to an unacceptable growth of these settlements.
9. I accept that taken with existing commitments, the proposal would far exceed the growth options identified for the settlements as part of the emerging PLAN Selby consultation exercise. However, these growth options do not currently form part of the development plan and as such I am only able to attach limited weight to the quoted figures in my overall Decision. Furthermore, I have not been provided with substantive evidence to demonstrate how the resultant increase in population and dwelling numbers would adversely affect the sustainability of these settlements.
10. In light of the foregoing, I conclude that although the proposal conflicts with the settlement strategy for the area in that it would result in new housing in the countryside, for which there are no special circumstances, in conflict with CS Policy SP2, I am not convinced that the scale of development proposed would conflict the objectives of CS Policy SP5, particularly having regard to the fact that the figures quoted in this policy are minimum, rather than maximum housing numbers.
11. However, the Council acknowledges that it is unable to demonstrate a five year supply of deliverable housing sites. As such, and in accordance with paragraph 49 of the Framework, the Council's policies for the supply of housing should not be considered up to date (in this case CS Policies SP2 and SP5). Paragraph 14 of the Framework states that where the development plan is absent, silent or relevant policies are out-of-date, 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.

12. Paragraph 49 further states that housing applications should be considered in the context of the presumption in favour of sustainable development. Sustainable development is identified as having 3 dimensions in paragraph 7 of the Framework: economic, social and environmental.
13. In terms of the economic role of sustainability, the scheme would provide employment opportunities during its construction. The intended future occupiers would be likely to support local services and facilities. Future revenue from funds payable to the Council's Community Infrastructure Levy (CIL) regime would support new infrastructure projects, with the resultant economic benefits.
14. The social role of sustainability includes providing the supply of housing required to meet the needs of present and future generations. The provision of both market and affordable housing on the site would be a social benefit in support of the scheme. The Council consider that the location of the site is sustainable given its relationship to services and facilities in the village and from my observations, I have no reason to disagree. There are public transport opportunities within the vicinity of the site, and nearby services that the intended future occupiers of the new dwellings could walk or cycle to. This would comply with both the social and environmental roles of sustainability.
15. The environmental role of sustainability includes protecting and enhancing our natural, built and historic environment and this is considered below under the second main issue.

Character and Appearance

16. Amongst other matters, CS Policy SP18 seeks to safeguard and enhance the natural and historic environment of the area. CS Policy SP19 requires new development to have regard to local character, identity and context of its surroundings, including settlement patterns and the open countryside. Saved Policy ENV1 of the LP has similar objectives and amongst other matters, requires development to take account of the character of the area. The appeal site is identified within the Council's recent 'Settlement Setting Landscape Assessment', undertaken in respect of emerging PLAN Selby, as having medium sensitivity to development.
17. In that the proposal would result in a new housing scheme upon an undeveloped agricultural field, the character and the appearance of the area and the setting of Eggborough would change. Although there is an agricultural field between the appeal site and the built development on the northern side of Weeland Road, this has a limited frontage along the road. The appeal site extends only slightly beyond the existing development limit bounded by Kellington Lane on the opposite side of the road. The new housing on the site would be viewed in the context of existing residential development on the approach into and out of the village. It would not extend as far back from Weeland Road as the recent development off Sycamore Avenue. The site's northern boundary would be in line with the northern boundary of The Bungalow. In light of the above, I consider that the appeal proposal would

appear as a natural extension to the village. It would not appear to be divorced from it, as suggested by the Council.

18. Whilst I note the Council's and Parish Council's concerns regarding a defensible boundary to the development limit of the village, I find that the access track to Teasel Hall would provide such a boundary, as would the existing hedgerow along the northern boundary of the site. Although this would be unlikely to relate to the Parish boundary, I am satisfied that physically and visually, the proposal would appear to be part of the existing settlement. Matters including the layout of the scheme, landscaping and the design of the dwellings are not before me at this stage. However, they are matters that the Council could control as part of a subsequent planning application.
19. In light of the foregoing, whilst the proposal would change the character of this agricultural field and the setting of Eggborough, I find that the location of the site relative to the built up area of the village, and the context within which the proposal would be viewed would not be so harmful to make the scheme unacceptable. I therefore conclude that the proposal would not result in significant harm to the character and appearance of the area or the setting of the village. There would be no conflict with the objectives of CS Policies SP18 and SP19 or LP Policy ENV1. Furthermore, there would be no conflict with the environmental role of sustainability as set out in the Framework.

Other Matters

20. The Council has referred me to an appeal decision in respect of another site in Eggborough (Ref: APP/N2739/W/16/3149401) where my colleague found that conflict with the development strategy for the area would result, and harm would be caused to the character and appearance of the area. Whilst I note that the issues identified in this appeal were similar to the scheme before me, this appeal was determined at a time when the Council could demonstrate a 5 year supply of housing land. Its policies for the supply of housing were therefore up-to-date. This is not the case with the appeal proposal and as such I do not find the schemes to be comparable. Limited weight has therefore been attached to this example in my overall Decision.
21. Eggborough Parish Council and local residents have raised concern about the frequency of buses serving the village and rail services serving Whitley Station, and the closure of major employment centres in the area. Concern is raised that as a result, the intended occupiers of the new dwellings would have a high reliance on the private car. Whilst noting these concerns, development plan policies support the expansion of DSV because they are considered to be sustainable. On the basis of the evidence before me, and having regard to the Council accepting that the site is in a sustainable location, I have no good reason to dismiss the proposal on these grounds.
22. Concern has also been raised about the reduction in separation distance between Eggborough and Kellington. Kellington Parish Council consider that there is approximately 1 kilometre between the respective villages. This is not disputed. In terms of the built development of these settlements, I observed that a substantial gap of undeveloped countryside would remain between the appeal proposal and the built up area of Kellington. There would be no coalescent of settlements as a result.

23. I note the concerns raised about the effect of the proposal on drainage within the area. However, this was not included as a reason for refusal within the Council's decision notice. Both main parties agree that foul sewage from the site would be disposed of via a mains sewer, and that surface water drainage could be designed to ensure that no detriment would be caused. On the basis of the evidence before me, I consider that a suitable drainage strategy could be designed and achieved, which would need to be approved by the Council in any event.
24. Whitley School is a different site to the one I am considering. The matter of access and congestion outside the school is not before me and is not a determining factor in this case. Whilst I note the concerns relating to the waiting times to see a doctor or to get a hospital appointment, I have not been provided with evidence to demonstrate that these services are at saturation point and would not be able to cope with the proposed increase in population of the village. In any event, the Council has indicated that the development's CIL contributions could be used to improve facilities if necessary. I therefore attach limited weight to this matter in my overall Decision.
25. Concern has been raised about the proximity of the access into the site to the junction with Kellington Lane. I observed that the new access would be on a stretch of road covered by a 30 mile per hour speed limit. Visibility was good in both directions. It was also good at the junction of Kellington Lane. I note that the Highway Authority did not raise concern about the proposal in relation to highway safety. If the speed limit is not being adhered to, this is a matter that should be drawn to the attention of the police. On the basis of the evidence before me, I have no reason to reach a different conclusion to the Highway Authority in this regard.
26. The Council's decision notice did not include the timing of the appellant's Ecological Appraisal or Arboricultural Impact Assessment as a reason for refusal. In the absence of convincing evidence to demonstrate otherwise, I have no reason to conclude that the surveys were not undertaken at the right time of year. I note from the Council's committee report that the North Yorkshire Bat Group and the Yorkshire Wildlife Trust did not raise this matter as a concern in their consultation responses. Accordingly, this is not a determining factor in this case.
27. Kellington Parish Council has drawn my attention to funds paid through the Council's CIL regime being received by this Parish, rather than Eggborough. Be that as it may, this is not good reason to refuse a scheme that it otherwise acceptable. The relationship of the appeal site to Kellington village hall carries limited weight, because occupiers of the new dwellings could choose alternative ways to vote if it was not convenient to vote in person.
28. Reference has been made to the rejection of the Willow Green Eco Town. I have not been provided with detailed drawings or the background to this case and I am therefore unable to ascertain whether it is directly comparable to the scheme before me. In any event, each planning application and appeal must be determined on its individual merits, and it is on this basis that I considered the appeal scheme.

Section 106 Agreement

29. The submitted Section 106 Agreement would make provision for the provision of affordable housing, on site public open space and a contribution towards waste and recycling. I am obliged to consider whether such provision would accord with paragraph 204 of the Framework and, in respect of the waste contribution and public open space, whether the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 would be met.
30. Policy SP9 of the CS seeks to achieve a 40/60% affordable/general market housing ratio within overall housing delivery. On sites of 10 dwellings or more, the policy requires that 40% affordable housing is provided. Further guidance is provided within the Council's adopted 'Affordable Housing Supplementary Planning Document'. The appellant is proposing that 40% of the new dwellings would be affordable. Given the proposed number of new dwellings, I find that this provision is reasonable and necessary to make the development acceptable. The tests set out in the Framework are complied with.
31. Provision would also be made for 2,900 square metres of the site to be used as public open space. The Council has not raised objection to this in evidence. Given that the intended future occupiers of the scheme would be likely to place a demand on public open space in the area, it is reasonable to provide open space upon the site. In the event that additional open space is required, the Council has confirmed that this could be achieved through its CIL charging regime. I find that the statutory tests are met in respect of this matter.
32. The Section 106 Agreement would also make provision for £65 to be paid for each dwelling built on the site, to be used for the provision of waste and recycling facilities. LP Policy CS6 requires developers to provide for or contribute to the provision of infrastructure and community facility needs that are directly related to a development, and to ensure that measures are incorporated to mitigate or minimise the consequences of that development. LP Policy ENV1 allows for arrangements to be made for upgrading, or providing services and infrastructure. In this regard the contribution sought is reasonable and necessary. The statutory tests are met.

Conditions

33. The Council has provided me with a list of conditions it would wish to see imposed in the event that the appeal was allowed. I have considered these under the guidance on conditions set out in the Planning Practice Guidance (PPG).
34. A condition is necessary to ensure that the development is carried out in accordance with the approved plans. Conditions are necessary controlling details of the proposed access, construction vehicle parking and material storage, in the interests of highway safety and the character and appearance of the area. In the interests of highway and pedestrian safety and to encourage walking from the site, a condition is necessary requiring the provision of a footway along the frontage of the site.
35. To ensure that the site is properly drained conditions are necessary controlling surface water and foul drainage. In the interest of public health, conditions are necessary requiring site investigation and remediation to take place to assess

and mitigate sources of contamination. The wording of the suggested conditions has however been amended to reflect the guidance in the PPG.

36. Conditions requiring details of street lighting and materials for internal roads are not necessary at this stage, as these matters are not before me.

Planning Balance and Conclusion

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. National planning policy as contained within the Framework is a material consideration.
38. Although the proposal would conflict with the spatial development strategy for the area in that the site is located within the open countryside, this strategy is not up to date by virtue of the Council not being able to demonstrate a 5 year supply of deliverable housing sites. In such circumstances, paragraph 14 of the Framework advises that 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 were specific policies in the Framework indicate development should be restricted.
39. The proposal would result in economic and social benefits. The site is located close to local services and facilities, which could be accessed by transport modes other than the private car. Subject to a suitable layout, landscaping and design, which could be controlled by the Council as part of a future application, I conclude that harm would not result to the character or appearance of the area. There would be no conflict with the environmental role of sustainability in this regard. The proposal would not result in harm to highway safety, biodiversity interests, and could be suitably drained. It would not have an adverse effect upon the services and facilities within the area. Taking these factors into account, I conclude that the appeal proposal would comprise sustainable development for which the Framework establishes a presumption in favour. There are no specific policies in the Framework which indicate that the development should be restricted.
40. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

R C Kirby

INSPECTOR

Schedule

Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 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 following approved plans: Drawing No: Planning dated 03.02.16 and Proposed Site Access: SCP/15346/F02.
- 5) No development shall take place until details of the standards to which the access serving the development is to be constructed, including lining and signing, traffic calming measures, sections, visibility splays, surfacing, kerbing, edging and drainage has been submitted to and approved in writing by the local planning authority. No house shall be occupied until the access has been constructed in accordance with the approved details.
- 6) The development shall not be brought into use until a 2m wide footway along the site frontage has been provided in accordance with details previously approved in writing by the local planning authority.
- 7) No dwelling shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

- 8) There shall be no establishment of a site compound, site clearance, excavation or depositing of material in connection with the construction on the site until proposals have been submitted to and approved in writing by the local planning authority for the provision of:
- (i) on-site parking capable of accommodating all staff and subcontractors vehicles clear of the public highway;
 - (ii) on-site materials storage area capable of accommodating all materials required for the operation of the site.
- The approved areas shall be kept available for their intended use at all times that construction works are in operation.
- 9) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, 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), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- (i) a survey of the extent, scale and nature of contamination;
 - (ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 10) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development is first occupied. Upon completion, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.
- 11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which

is subject to the approval in writing of the local planning authority.
Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.