

Appeal Decision

Inquiry Held 6 - 9 June 2017

Site visit made on 9 June 2017

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 17 August 2017

Appeal Ref: APP/E2001/W/16/3165880

Land South of Back Lane, Holme-on-Spalding Moor YO43 4AW

- 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 Gladman Developments Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/16/02584/STOUT, dated 1 August 2016, was refused by notice dated 13 December 2016.
 - The development proposed is up to 175 residential dwellings (including 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access points from Back Lane and Baileywood Lane and associated ancillary works. All matters reserved accept the main site access' off Back Lane and Baileywood Lane.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by East Riding of Yorkshire Council against Gladman Developments Ltd. This application is the subject of a separate Decision.

Preliminary matters

3. Section 106 unilateral undertakings to make provision for open space on the site and to provide affordable housing were submitted at the Inquiry.
4. Following the close of the Inquiry the main parties were given the opportunity to comment on the Court of Appeal judgment *Barwood Strategic Land v East Staffordshire BC and SSCLG* [2017] EWCA Civ 893. I have taken the comments made into consideration.

Main Issues

5. The main issues are:
 - whether or not the Council is able to demonstrate a 5 year supply of deliverable housing sites
 - whether the proposed development accords with the Development Plan and

- if not, whether there are considerations to indicate that permission should be granted other than in accordance with the Development Plan.

Reasons

Housing land supply

6. The Council and appellant have agreed a 5 year net housing land supply requirement of 11,525 based on the 2016 Strategic Housing Land Availability Assessment (SHLAA) up-dated to provide an interim 2017 figure for the purposes of this appeal. This includes a 20% buffer and utilises the 'Sedgefield' approach to address previous shortfalls in delivery over the next five years.
7. The difference between the parties thus concerns supply sufficient to meet this requirement. The parties' positions on this changed marginally during the course of the inquiry as a result of agreement reached on a number of the disputed sites. By the close of the Inquiry the appellant's position was that the total number of dwellings in the 5 year supply is 10,054 equating to 4.36 years supply, with the Council's position being 12,293 equating to 5.33 years.
8. The contribution to the supply from windfall sites and small sites with planning permission is agreed, as is the contribution from new large sites with planning permission. The parties differ on the deliverability of some large sites with planning permission but the principal area of disagreement is in regard to local plan allocated sites. In particular concerns are raised with regard to sites without planning application activity and not under the control of developers, and lead-in times.
9. The National Planning Policy Framework (NPPF) requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements. Footnote 11 states that to be deliverable, sites should be available now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.
10. The Council has produced and updated a SHLAA, most recently in 2016 with a base date of 1 April 2016. Looking back it is evident that completion rates, in other words actual delivery of housing, has not met the projected delivery set out in successive SHLAAs. The appellant's contention that this calls into question the credibility of the Council's assessment of the deliverability of sites is evidently very similar to that which the same appellant put before the Inspector in a recent appeal in the same planning authority area regarding a site in South Cave¹. In that case the Inspector drew a distinction, by reference to the judgement in the St Modwen case², between what is deliverable and delivery.
11. In St Modwen Ouseley J at paragraph 51 said '*.. The NPPF and the assessment of housing land supply are concerned with "deliverability" which is an assessment of the likelihood that housing will be delivered in the five year period on that site. The assessment of housing land supply does not require certainty that the housing sites will actually be developed within that period. The planning process cannot deal in such certainties. The problem of*

¹ Appeal reference APP/E2001/W/16/3151699 dated 13 March 2017

² *St Modwen Developments Limited v SSCLG* [2016] EWHC 968 (Admin)

uncertainty is managed by assessing "deliverability" over a five year period, re-assessed as the five year period rolls forward.'

12. Whilst the objective is to boost significantly the supply of housing, the requirement placed by the NPPF on the local authority is not to provide certainty that houses will be delivered within the 5 year period but to demonstrate that there is a 'realistic prospect of achieving the planned supply'³.
13. Both parties refer to Wainhomes⁴ and the judgement of Stuart-Smith J that inclusion of a site in an emerging Local Plan is at least some evidence that the site is deliverable. In this case the Local Plan has been adopted and the appellant accepts that this gives a greater degree of certainty. The Local Plan Inspector, having had regard to the deliverability of the allocated sites including those without planning permission, concluded that the Council is able to demonstrate a 5 year supply. And more recently the South Cave appeal Inspector, whilst noting the history of non-delivery on some of the sites, a history of falling supply and the peak delivery period being shown to be moving further back in the plan period, reached the same conclusion. The conclusions of these Inspectors give substantial weight to the case for considering these sites deliverable within the 5 year period.
14. The Planning Practice Guidance (PPG) states that *Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years*. The SHLAA considered pre-build lead-in times for 5 year supply sites including Local Plan allocations without planning permission. For the April 2016 SHLAA these were increased to reflect the confirmed lead-in times and the evidence and feedback from the SHLAA working groups. The Core Working Group is made up of national and local house builders and the Wider Group includes a range of other housebuilders and agents including the appellant. Notwithstanding a history of slower or to-date absent delivery on some sites, there is thus a strong and up-to-date evidence base for the lead-in time assumptions applied to the site assessments in the SHLAA. In this context, whilst the inclusion of sites within the Prospectus⁵ of available sites published by the Council indicates no developer interest at the time of compiling the document, it does not on its own amount to 'clear evidence that they will not be implemented within 5 years'. Indeed the appellant notes that 3 of these sites are now subject to planning activity and the Council advise that 3 more are moving forward.
15. I agree therefore with the conclusions of the South Cave Inspector that neither an absence of delivery in the past, the lack of planning activity nor inclusion in the Prospectus indicate in themselves that allocated sites in this case are undeliverable. The appellant's contention made in respect of the vast majority of the 66 sites listed in the HSOCG that a failure to demonstrate active developer interest or planning activity on all or parts of the sites either now or in the past is an indication that they are not deliverable within the 5 year period is not therefore well founded.

³ NPPF paragraph 47.

⁴ *Wainhomes (South West) Holdings Limited v SSCLG* [2013] EWHC 597 (Admin)

⁵ East Ridng Housing Site Prospectus February 2017

16. Site constraints such as contamination referred to in the SHLAA listings will have been considered through the SHLAA process and all but a very few of the disputed sites were also before the South Cave Inspector. No evidence was presented to suggest that these constraints have changed significantly since the South Cave Inquiry and I have no reason therefore to reach a different conclusion in this instance. And I have seen no evidence to indicate that the 4 owners of HSOCG site 5 are unable to agree or anything to suggest that the owners' recorded confirmation that the site is available no longer holds good. There is nothing unusual in green field sites continuing in alternative use such as farming until such time as they are developed and whilst in the case of HSOCG site 1 access to the site would be required through existing farm buildings, it seems reasonable to me that these could be re-located to elsewhere on the holding. I find no significant additional constraints on deliverability of the sites therefore in these respects.
17. Sites 11, 12 and 13 are within flood risk and low value areas of Goole, and site 11 is subject to noise. All these factors were considered through the SHLAA process and by the South Cave Inspector and no recent evidence of additional constraints has been submitted. CIL viability assessments did not find these or other low value area sites undeliverable. The Council reported that the site 13 safety hazard has now been resolved and this was not challenged by the appellant.
18. Sites 26, 27 and 28 are complex with applications for parts of the sites, hybrid applications and mixed allocations making straightforward projections of delivery rates more difficult. However the Council reported that discussions are now progressing on a s106 obligation on site 26, and that site 28 will be released in 2018 with the projected delivery pushed back to the end of the 5 year period. A major hybrid application is pending on site 27 with the developers projecting delivery of 100 - 150 dwellings per annum. As with site 42 the issue between the parties concerns rate of delivery. The assumed build rates on large sites was challenged at the South Cave Inquiry and in that instance the Inspector found in favour of the Council's rates which were supported by direct comparison with delivery on a similar site in close proximity. No substantial evidence was submitted by the appellant at this Inquiry to lead me to take a different view. I find nothing here therefore to cast significant doubt on the deliverability of these sites within the 5 year period.
19. In coming to my decision I have taken into account not just the conclusions of the Local Plan Inspector and South Cave appeal Inspector but also the evidence put before me in respect of all disputed sites including allocated sites now in the 5 year period as this has moved forward since the 2016 SHLAA based date and since the January 2017 South Cave Inquiry. In respect of none of these have I found robust evidence to suggest that the SHLAA assessment made, the methodology applied or the up-dated evidence provided by the Council no longer provides a reasonable basis on which to consider the sites deliverable in the terms required by the NPPF. Whilst the Council's assessment of supply against requirement has decreased since the South Cave Inquiry reflecting an interim 2017 up-date, for the purposes of this appeal it stands at 5.33 years. I conclude therefore that the Council is able to demonstrate a 5 year supply of deliverable housing sites.

Development Plan

20. The Development Plan for the district includes The East Riding Local Plan Strategy Document (SD) April 2016 and the East Riding Local Plan Allocations Document (AD) July 2016. SD Policies S3, S4 and S5 together set out a Settlement Network that directs most new development to areas where there are services, facilities, homes and jobs, and where it can be served by the most sustainable modes of transport. A 7 tier settlement hierarchy is defined, the 1st tier being the Major Haltemprice Settlements and the 7th being Countryside. The stated purpose of the Settlement Network is to 'ensure that the right level of development takes place in the right places'.
21. SD Policy S3 directs new development to within the development limits of the settlements in the Settlement Network. There is no dispute that the appeal site lies outside, albeit adjacent to, the development limit of Holme-on-Spalding Moor which is identified as a 4th tier Rural Service Centre. The appellant acknowledges the policy intention that the higher order settlements should accommodate the greatest amount of development and that insofar as the proposed development would be at a 4th tier settlement the underlying objective of the policy approach to spatial distribution is conflicted⁶.
22. Policy S5 places no cap on the number of new dwellings in any of the listed settlements. Nevertheless the accompanying text to the Policy makes clear the intention that the scale of development in Rural Service Centres and Primary Villages should not compromise the focus on the higher tier settlements as the most sustainable locations for development. The scale of the appeal proposal is such that it would almost double the planned provision in Holme-on-Spalding Moor increasing it from the 225 units set out in Policy S5 to some 400 dwellings. This would be significantly higher than that planned in Policy S5 for any of the other Rural Service Centres and only some 150 dwellings less than that planned for Withernsea which is a town in the next tier up in the settlement hierarchy. As such I consider it would undermine the settlement hierarchy established in the Plan. SD Policy S4 supports development in villages and the countryside where it is of an appropriate scale to its location taking into account the need to support sustainable patterns of development. For the reasons given above I consider development of the scale proposed in this location would conflict with the strategy for sustainable patterns of development set out in the SD in conflict with this objective.
23. Policy S4 goes on to state that such development should also accord with the specific provisions of parts B or C of the policy. Land outside a development limit is regarded as countryside, and here part C of the Policy sets out a list of types of development that will be supported. The proposed development accords with none of the listed types and is not thus supported by this Policy.
24. Overall I conclude the proposed development would thus conflict with Local Plan strategic policies for promoting sustainable development and for managing the scale and distribution of new development, which together direct most new development to areas where there are services, facilities, homes and jobs, and where it can be served by the most sustainable modes of transport.

⁶ Paragraph 20 of the closing submissions on behalf of the appellant.

Other considerations

25. The Local Plan documents are recently adopted and neither absent nor silent. And in view of my conclusion above that the Council is able to demonstrate a 5 year supply of deliverable housing sites policies for the supply of housing are not out-of-date. The recent Barwood Court of Appeal judgement⁷ has confirmed that in these circumstances the presumption in favour of sustainable development set out in paragraph 14 of the NPPF is not engaged.
26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides a statutory duty to determine an application for planning permission in accordance with the development plan unless material considerations indicate otherwise. The NPPF states that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously. In this context the appellant has drawn to my attention a number of aspects of the appeal scheme which it is contended demonstrate that the proposal would be 'sustainable development' in these terms.
27. The Government has made clear that the provision of housing is a high priority and the NPPF seeks to 'boost significantly' the supply of housing. The proposed development would provide 175 dwellings and, as with any housing development, it would bring with it economic benefits in terms not just of construction phase jobs and spending but also New Homes Bonus payments and Council tax. In addition to market housing the development would provide 44 affordable dwellings which would contribute towards addressing the unmet need in the area as a whole. Whilst I am unaware of the particular circumstances of the Pulley Lane Wychavon decision to which the appellant refers, I too am conscious of the human consequences of such a shortfall and consider any contribution must be seen as a benefit. The public open space on the site would be accessible to surrounding residents and the development would provide biodiversity enhancements including planting, the provision of bat and bird boxes, deadwood piles and SUDS habitats.
28. All of these however would be equally applicable to many other developments in other locations including those in higher tier settlements where occupiers would have access to significantly better and more extensive facilities, services, jobs and sustainable transport choices. They are generic, non-specific benefits. With regard to those that relate directly to the adjacent settlement: Holme-on-Spalding Moor is identified as a 4th tier settlement which by definition has limited facilities. The accessibility of the site to these facilities on foot would be correspondingly of limited benefit. And whilst I acknowledge the district wide need for affordable housing I have seen no evidence of the level of need in Holme-on-Spalding Moor or the surrounding area and this together with the relatively small number of affordable dwellings proposed limits the weight I give to it. The biodiversity enhancements, which would be welcome anywhere, must in this instance be balanced against the loss of green field land albeit one of low ecological value and not identified as a valued landscape. As such the overall environmental benefit too would be limited.
29. The essential point here is that whilst the benefits referred to could contribute in varying degrees towards sustainable development, they do not address the fundamental issue in this case, that of location. The Local Plan is predicated on securing sustainable development and achieves this in large part by ensuring

⁷ *Barwood Strategic Land v East Staffordshire BC and SSCLG* [2017] EWCA Civ 893

that the right level of development takes place in the right place. The benefits put forward by the appellant are no more than would be expected of almost any housing development and do not provide specific justification for the development proposed in the location proposed. They do not therefore in my judgement amount to other considerations sufficient to outweigh the presumption in favour of the Development Plan.

Conclusion

30. For the reasons given and having had regard to all other matters raised I conclude that the appeal should be dismissed.

Olivia Spencer

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Charles Banner of Counsel
Assisted by
Matthew Henderson of Counsel

Instructed by Peter Atkinson of East Riding of
Yorkshire Council

He called

Owen Robinson MA MRTPI
James Chatfield DipUP
MRTPI

Principal Planning Officer
Team Leader Strategic Development Team

FOR THE APPELLANT:

John Barrett of Counsel

Instructed by Gladman Developments Ltd

He called

Mark Johnson MRTPI MRICS

Johnson Mowat LLP

INTERESTED PERSONS:

Peter Clark
Lisa Curtis
Victoria Aitken
S Towse

Local resident
Local resident
Ward Councillor
Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Hard copy of Rebuttal Statement submitted by the appellant
- 2 Signed Statement of Common Ground
- 3 St Modwen Court of Appeal Secretary of State's Skeleton
Argument submitted by the Council
- 4 Court of Appeal: North Wiltshire District Council v SSE and Clover
submitted by the Council
- 5 Extract from the Hull Strategic Housing Market Assessment
November 2013
- 6 Supreme Court Judgment: Suffolk Coastal District Council
V Hopkins Homes Ltd and SSCLG, Richborough Estates
Partnership LLP and SSCLG v Cheshire East Borough Council
- 7 Extract from Hull and East Riding Joint Housing Need Study
December 2016
- 8 Housing Land Supply summary of the parties positions.
- 9 Extract from Institution of Highways & Transportation Guidelines
for Providing for Journeys on Foot
- 10 Map: East Riding of Yorkshire Boundaries
- 11 Disputed sites pro-formas submitted at the South Cave Inquiry
- 12 Statement of Cllr Aitkin
- 13 Certified copies of 2no. section 106 unilateral undertakings
submitted by the appellant

- 14 Final Housing Land Supply summary of the parties positions
- 15 Costs application by the Council
- 16 Appellant's response to the costs application
- 17 Map and aerial photograph showing agreed site visit view points

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

- 18 Comments on Barwood Court of Appeal judgement submitted by the appellant
- 19 Comments on Barwood Court of Appeal judgement submitted by the Council