



Appeal Decision

Site visit made on 10 December 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 31 March 2020

Appeal Ref: APP/E2001/W/19/3238436

Land south of Cherry Tree Lane and north of Magdalen Lane, Hedon HU12 8JZ

Easting: 519136 Northing: 428870

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Birstall May Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/00925/PLF, dated 13 March 2019, was refused by notice dated 13 August 2019.
 - The development proposed is construction of 35 new 1, 2, 3 and 4 bedroom homes with associated garages and parking, including new access, amenity space and drainage works on land south of Cherry Tree Lane and North of Magdalen Lane, Hedon, East Yorkshire.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appellant has submitted various iterations of a Unilateral Undertaking (UU) prepared under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) (the Act). The UU, which throughout those iterations has remained unsigned and undated, seeks to secure provision of affordable housing and amenity green space and financial contributions towards equipped recreational play area and outdoor sports facilities. I return to the UU and these provisions below.
3. The appeal site has had a relatively active recent planning history, which both parties summarise in their appeal submissions. Of particular relevance to the current appeal, and against which the appellant has sought to compare the current appeal scheme, is a scheme which was previously considered at appeal¹. Although I do not have the full details of that scheme before me, I have been provided with the Inspector's decision in that respect, to which I have had particular regard. The appellant has, in the current instance, described the previous appeal proposal and framed the Grounds of Appeal as addressing the Inspector's comments 'such that the revised application can now be supported'.
4. Thus, having regard to the above, I consider the main issues to be:
 - Whether the proposed development would protect or enhance the character or appearance of the Hedon Conservation Area;

¹ APP/E2001/W/16/3147471

- Whether or not the proposed development would address local housing need in terms of house size and location of affordable housing; and
- Flood risk.

Reasons

Character and appearance

5. Policies ENV1, ENV2 and ENV3 of the East Riding Local Plan Strategy Document (ERLP SD) set out the Council's broad approach to promoting and integrating high quality design into sensitive and historic environments. Together, these policies seek to ensure that development safeguards and respects the local character, appearance and context of development sites; safeguards views from and setting of outstanding built features and to protect and enhance open spaces within settlements which contribute to their character.
6. The appeal site lies outside the Hedon Conservation Area (CA) but the site's western boundary along the field drain follows the CA's eastern boundary. Beyond that, the CA includes the open paddocks on the western side of Station Lane, to which the rear of properties on Soutter Gate back on. The Conservation Area Appraisal (CAA) notes that the special character and appearance of Hedon and its CA lies in 'its unique assembly of 18th and 19th century properties within a constructed town centre into which little 20th century development has intruded'.
7. The CAA goes on to note the relevance and importance of open spaces, identifying two grassed areas of particular significance. One of these, Wychcroft (including Watson Park, which adjoins the appeal site on its western boundary), is of particular significance to the appeal proposal as it has an important contributory role in the approach to, and setting of, the CA. Indeed, the pasture land on the western side of Station Lane is noted in the CAA as providing 'perhaps the most attractive approach to the Conservation Area'.
8. Station Lane lies within the CA, and views of the CA's roofscape are taken over the pasture land, whilst the pleasantly open, green aspect that the pasture affords of the CA is continued on the opposite, eastern, side of Station Lane into Watson Park and the appeal site beyond. Together, these open areas create a pleasing network of open space in direct contrast to the mid- to late 20th century development that partially encircles the appeal site to the north and east and, to the south, on the opposite side of Magdalen Lane. However, even to the south, the mature trees and extensive grass verge between Magdalen Lane and Alison Garth combine with the verdant boundary vegetation of the appeal site to create a pleasing approach to the town centre and CA. the CAA's assessment of the contribution of the natural environment to the CA notes Wychcroft as being of 'particular significance as the only remaining open space affecting the setting of the Conservation Area'.
9. The Inspector, in considering the previous appeal scheme, concluded that the open space which the appeal site presently offers is important to the setting of the CA. The appellant does not directly challenge this conclusion in respect of the appeal proposal, and I do not disagree. From within the CA, viewed from across the pasture and from Station Lane, the appeal site provides depth to the verdant backdrop of views out of the CA. Similarly, on approach to the CA from the east, the openness of the site beyond its seasonally verdant southern

and western perimeter vegetation, adds to that of Watson Park and the pasture towards the rear face of built development on Souter Gate.

10. This sense of openness would be lost as a consequence of the proposal. I have carefully noted the appellant's efforts to address the Council's concerns, and those of the previous Inspector, in the appeal proposal's layout. The green buffer areas around all sides of the development site's perimeter is a significant element of the proposal and, from descriptions at least, is acknowledged as an improvement on the previously dismissed appeal scheme. However, the presence of buildings within the site would nonetheless be keenly felt; perhaps less so when the otherwise deciduous perimeter vegetation along the southern and western boundaries of the site is in leaf, but their presence would nevertheless be felt, particularly so in during late autumn, winter and early spring.
11. The proposal's built form would not therefore directly adjoin the eastern approach to the CA, or the CA boundary itself along the western side of the site. The open swale between the western site boundary and the western extent of built development within the site would, to an extent, maintain the openness of Watson Park and the wider Wychcroft area which is noted as contributing so significantly to the character and appearance of the CA. However, the proposal would introduce significant built form into an open area which, together with adjacent and adjoining areas of open land and pasture create a network of open space, inside and outside the CA, which contributes significantly to the CA's character and appearance, and to its setting.
12. Although the appeal site does not lie within the CA, it lies directly adjacent to it. It also forms part of a wider network of open land which links with open land and pasture within the CA. Those areas within the CA are considered to be of significant to the character and appearance of the CA and I find that the contribution that the appeal site makes to that should not be underestimated. Notwithstanding the appellant's efforts in revising the scheme and seeking to address the concerns of the previous Inspector, I am also of the view that the loss of this open area, and the erosion of the wider openness of this and adjacent areas of open land, would fail to safeguard views of, and the setting of, outstanding built development of which collectively the Hedon CA is representative. Despite positive aspects of the proposal in terms of the landscape perimeters and swales, the proposal would fail to protect and enhance what is widely considered to be part of an important area of open space which contributes significantly to the character of Hedon.
13. For these reasons, the proposal is contrary to ERLP SD policies A1(C4), ENV1(A1, B1 and B15), ENV2 (A and A2) and ENV3 (B1). Unlike land and buildings within a CA, there is no statutory protection afforded to the setting of Cas. Nonetheless, the Framework² states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. It goes on to state that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
14. As concluded by the previous Inspector, I concur with the appellant's conclusion that the proposal would result in less than substantial harm to the setting and significance of the CA. There would, however, still be harm and so

² Paragraph 197

the judgement required by the Framework turns to matters of wider public benefit arising from the proposal.

15. I outline in more detail below, my consideration of whether the proposal would provide an appropriate mix of housing to properly reflect local circumstances and context. Whilst the proposal would now provide 1-bed properties, and a mix of 2-, 3- and 4- bed properties, I share the Council's concern that the proposal retains a disproportionate level of larger 4-bedroom properties and that it would not adequately reflect local circumstances, as identified in the Council's 2016 SHMA targets and guidelines. For the reasons I set out below, I do not consider that the current appeal scheme provides an appropriate or balanced mix of housing reflective of local circumstances. In this respect, it does not fully address either the relevant development plan policies highlighted above, or the conclusions of the previous Inspector.
16. The Council do not object to the proposal in terms of open space provision or in terms of the numbers or sizes of the proposed affordable housing units. Both of these aspects weighed against the previous iteration of the proposal considered at appeal. The absence of harm in these respects now attracts weight in support of the current proposal. Thus there are social benefits arising from the proposal, whilst the proposal would afford the opportunity to enhance existing perimeter vegetation and to provide elements of landscape and planting diversity within the site's interior. I accept too, that the overall built form of the proposal in the context of the residential developments to the north and east of the site, and beyond Magdalen Lane to the south is not out of character with those areas. In economic terms the proposal would give rise to employment during the construction phase and, once complete, the spending power attributable to occupiers of 35 dwellings and the contribution that this would make to the local economy.
17. Nevertheless, I give the harm, albeit less than substantial harm, that the proposal would cause to the setting and significance of the CA considerable weight. Coupled with the inappropriate mix of housing in terms of house sizes in the context of identified local circumstances, the public benefits of the proposal do not outweigh the harm in these two respects. The proposal is, for the reasons I have set out, contrary to ERLP SD policies A1(C4), ENV1(A1, B1 and B15), ENV2 (A and A2) and ENV3 (B1) and contrary to the Framework, which taken together seek to ensure that development safeguards and respects the local character, appearance and context of development sites; safeguards views from and setting of outstanding built features and to protect and enhance open spaces within settlements which contribute to their character.

Housing need

18. The proposal would provide a mix of 1-, 2-, 3- and 4-bedroomed dwellings in detached, semi-detached, terraced and apartment form. Five of the overall total number of dwellings³ would be affordable homes, comprising of two 1-bedroomed apartments and three 2-bedroomed dwellings.
19. It is accepted by the Council that the proposal provides a better mix of housing than that proposed by the previous appeal scheme, both in terms of inclusion of 1-bed properties and also a broader mix of properties across the 2-, 3- and 4-bed sizes. The Council's 2016 Strategic Housing Market Assessment (SHMA)

³ 35 dwellings in total

supports the trends identified by the previous Inspector in relation to the earlier 2011 SHMA of there being a shortage of smaller homes. Thus, the 2016 SHMA notes estimated house types and sizes to accommodate household change, with greatest need remaining for smaller house types and goes on to set out indicative targets for house sizes in market housing schemes.

20. I am satisfied that the provisions of ERLP SD policies H1 and A1 adequately reflect the guidance set out in the Framework that the needs of groups with specific housing requirements are addressed. Both ERLP SD policies in this respect seeks to ensure that proposals contribute to the overall mix of housing in the locality, taking into particular account of local need, current demand and existing housing stock.
21. The 2016 SHMA⁴ sets out an indicative housing size mix target which identifies, and seeks to prioritise, the provision of smaller house types over larger house types. The breakdown between house types is usefully set out in the Council's officer report⁵. The proposal would, as the appellant states, provide a clear variety in house sizes. However, that variety would not reflect the local housing market pressures and mix as sought by ERLP SD policies H1 and A1.
22. Strict and inflexible adherence to targets may not desirable and variations can, as my attention has been drawn to extracts of such an example⁶, be held to work towards achieving a greater mix of housing across the local area. However, the appellant's grouping of house sizes fails to appropriately reflect the indicative breakdown of house sizes sought to achieve a locally appropriate mix of properties. Thus, the proportion of 4-bed properties proposed within the scheme would represent almost a third of the total number of units proposed and be more than double that to be sought for properties of that size. The proposal would also fail to meet the SHMA's aspirations for 2- or 3-bed dwellings which, as smaller properties are in greatest need in the local area, underscores the proposal's inappropriate variety and mix of property sizes.
23. I acknowledge that the proposal would bring forward housing within Hedon, a settlement that considered to be an appropriate location for new residential development. I also note that, whilst not the appellant does not dispute the Council's 5.1-year housing land supply figure, the proposal would contribute towards meeting the government's objective, expressed in the Framework⁷, of significantly boosting the supply of homes. The presence of a 5-year housing land supply is not a maxima, and thus whilst the 5.1-year supply figure is not sufficient to engage the tilted balance in the manner suggested by the appellant, the provision of further housing to contribute towards the government's aims regarding the supply of homes is nonetheless a matter which carries considerable weight.
24. However, so too does desire to achieve a mix of homes which reflects local circumstances. Whilst the current proposal is acknowledged to represent a step forward from that previously considered at appeal, there remains a disproportionate level of 4-bed properties within the proposed scheme. That this figure is offset by the high level of 1-bed properties which again, and although welcomed, differs significantly from the indicative aims of the SHMA in

⁴ Figure 99, p.129

⁵ Paragraph 7.42

⁶ APP/E2001/W/19/3226022, at paragraph 7.53 of appellant's Statement of Case

⁷ Paragraph 59

terms of house sizes, further emphasises that whilst the scheme would provide variety, that variety would not reflect local circumstances. I have not been presented with any compelling evidence to persuade me that the proposed mix of house sizes would either reflect local circumstances, or that an alternative approach with a significant proportion of larger 4-bed properties would be appropriate. For these reasons, I conclude that the proposal would fail to adequately reflect local circumstances of effectively provide homes for different groups in the community. The proposal would fail to accord with ERLP SD policies H1 or A1, or the aims of the Framework in this respect.

Affordable housing

25. The Council do not object to the proposal in terms of the numbers and size of affordable homes proposed on-site. Although the approach of scattered distribution of affordable housing is questioned by the Council, the proposal would nevertheless follow the approach to the distribution of affordable housing as set out in the Council's 'Affordable Housing' Supplementary Planning Document (SPD). The proposal would therefore avoid the ghettoization of the affordable housing provision and integrate the provision of affordable homes into the overall layout of the proposed development.
26. I am also satisfied that there is a development plan policy basis for seeking the provision of affordable housing within the proposed development. The provision of such would satisfy the provisions and tests set out within National Planning Policy Framework and the Community Infrastructure Regulations 2010. In these respects, the provision of affordable housing is a benefit to which I attach substantial weight.
27. However, the latest version of the UU upon which the appellant has requested the proposal be considered⁸ is unsigned and undated, albeit that it has been further amended to reflect the Council's most recent comments⁹. Although the submitted plans indicate which units would be allocated as affordable homes, I do not have an executed mechanism before me to secure or retain in the longer term those units as affordable homes. Whilst the provision of affordable homes would be a benefit which would weigh in support of the proposal, as there is no signed, dated or executed mechanism before me to secure those homes, this is not a benefit that I am able to consider against the harm identified above. Moreover, in the absence of an appropriate executed mechanism to secure such provision, the proposal would be contrary to ERLP policy H2.

Flood risk

28. The site lies within Flood Zone 3, an area at high risk of flooding and is also identified as an area of 'danger to some' in the Council's Strategic Flood Risk Assessment (SFRA). The Framework states that inappropriate development in areas at risk of flooding should be avoided by direct development away from areas at highest risk. Framework paragraph 163 sets out in detail the approach to adopted when determining planning applications in areas at risk of flooding.
29. It is not disputed that the proposal would pass the sequential test, nor is it disputed that the proposal would also satisfy the exception test insofar as the

⁸ 'Universal Undertaking 17/3/2020' enclosed with Birstall May Ltd letter dated 17 March 2020

⁹ 'Universal Undertaking_docx_0.4 EYRC comments' enclosed with East Riding Council email dated 16 March 2020

proposal would be flood resilient and resistant, safe for the proposal's intended lifetime and would not increase the risk of flooding off-site. The appellant's site-specific Flood Risk Assessment is accepted in this regard. However, the exception test also requires that the development must provide sustainability benefits that outweigh the flood risk.

30. As the submitted UU has not been signed, dated or appropriately executed the proposal provides no mechanism to deliver or retain an appropriate level of affordable housing. Nor would the overall housing mix adequately reflect local circumstances and context in the manner sought by ERLP SD policies H1 or A1, or the aims of the Framework in providing housing to meet different groups in the community. Taken together with the harm to the setting of the Hedon Conservation Area that I have outlined above, the proposal fails to adequately demonstrate the sustainability benefits necessary to outweigh the, albeit limited, risk of flooding. As such, I have to conclude that the proposal fails this element of the exception test, and therefore the exception test as a whole, and as a consequence, is in conflict with ERLP SD policy ENV6 and the provisions of the Framework and Planning Practice Guidance in respect of flood risk.

Other Matters

31. The UU also sets out arrangements for the provision and maintenance of amenity green space and financial contributions towards equipped recreational play area and outdoor sports facilities. However, as the UU remains undated, unsigned and unexecuted I have not considered these matters further.

Conclusion

32. For the reasons I have set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR