
Appeal Decision

Hearing held on 19 and 20 May 2021

Site visit made on 21 May 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th June 2021

Appeal Ref: APP/G2713/W/20/3262591

Land to the north of Saxty Way, Sowerby, North Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Steve Jackson, Karbon Homes against the decision of Hambleton District Council.
 - The application Ref: 19/01398/FUL, dated 26 June 2019, was refused by notice dated 7 May 2020.
 - The development proposed was originally described as the 'construction of 57 dwellings and associated infrastructure including provision of open space.'
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 47 dwellings with associated parking, two vehicular access points, pumping station within public open space and footway connections to adjoining land and associated infrastructure at land to the north of Saxty Way, Sowerby, North Yorkshire in accordance with the terms of the application, Ref: 19/01398/FUL, dated 26 June 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning application form. During the course of the application, the development was amended so that the number of dwellings was reduced to 47 dwellings. An amended description was agreed between the main parties. The Council determined the application on this basis and accordingly so have I. This is also reflected in the description which is set out in my decision paragraph, excluding the superfluous elements.
3. Prior to the hearing, I accepted late evidence from the appellant because it concerned affordable housing and so is of potential relevance to my decision. I also confirmed at the hearing the acceptance of late evidence from S.R. Ballard, described as the trustee executor of the land, for similar reasons.
4. At the hearing, a draft Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act was discussed in relation to planning obligations. A final version was submitted after the close of the hearing which I have considered in my decision.

Main Issues

5. The main issues are (i) whether the proposal would be in a suitable location for housing with regard to the Council's spatial strategy; (ii) the need for affordable housing; (iii) the effect on biodiversity interests; (iv) the effect on the recreational value of the site; (v) the effect on the character and appearance of the area; and (vi) if there is harm, whether this is outweighed by affordable housing and other considerations.

Reasons

Spatial Strategy

6. The appeal site comprises a grassland area with occasional trees within the site. The boundaries of the site are defined by trees, hedgerows and domestic boundary treatment. It was formerly used as a sports pitch, albeit this use ceased some time ago. The site lies to the north and east of dwellings on Saxty Way and, to the west, are dwellings that are under construction as part of a large development known as Sowerby Gateway. To the north is a track known as Green Lane, which is also a public right of way (PROW). More broadly, the site lies at the edge of the conjoined settlements of Sowerby and Thirsk, a not insignificantly sized built-up area.
7. Policy CP1 of the Local Development Framework (LDF) Core Strategy (2007) (Core Strategy) sets out the Council's approach to achieving sustainable development as part of its spatial strategy. It is an overarching policy that is applied as the starting point for all development proposals. As well as the various technical and environmental related criteria it applies, it advocates that development should utilise previously developed land, where that land is in a sustainable location, in preference to greenfield sites. This is not set out in absolute terms and so it does not, in itself, preclude the use of greenfield sites.
8. Policy CP4 establishes a settlement hierarchy approach. Whilst Thirsk (with Sowerby) is identified as a Principal Service Centre, the site lies outside of the associated development limit that is identified under the LDF. As a result, the site is considered to be in the countryside where development will only be supported when an exceptional case can be made in terms of Policies CP1 and CP2, and where a proposal conforms to a type of development that is subsequently listed in the policy. Policy DP9 of the LDF Development Policies Development Plan Document (2008) (Development Policies DPD) reiterates the approach that Policy CP4 takes, as applicable to the proposal.
9. The types of development that Policy CP4 lists includes affordable housing or community facilities which meet a local need, where that need cannot be met in a settlement within the hierarchy. The proposal would constitute an affordable housing scheme. All 47 proposed units would be available for affordable renting, rent to buy or shared ownership. In addition, the appellant is a housing association and the UU sets out relevant matters in relation to the proposal being delivered and maintained as affordable housing.
10. Whilst not contained in the reasons for refusal, I was also referred to Policy DP8 of the Development Policies DPD at the hearing. As this policy largely concerns itself with how limits are defined, it has a limited bearing. The same applies concerning the Council's Interim Policy Guidance (2015), which concerns conformity between Policy CP4 and the National Planning Policy

Framework (Framework), because it applies to settlements outside of the settlement hierarchy which is not applicable in this case.

11. The dispute between the main parties on whether the proposal would comply with the spatial strategy centres on the need for affordable housing under Policy CP4. If there is a proven need which cannot be met in a settlement in the hierarchy, then the proposal would comply with Policies CP4 and DP9, give weight to the development of this greenfield site under Policy CP1 and be supported as an exceptional case. If there is not a proven need, then the contrary position would apply.
12. As a consequence, my conclusion on whether the proposal would be in a suitable location for housing with regard to the Council's spatial strategy is dependent on affordable housing need, which I shall consider next in my decision.

Affordable Housing

13. Policy CP9 of the Core Strategy sets out to achieve a 40% proportion of affordable housing on housing developments in Thirsk and its hinterland. As the proposal would result in a 100% proportion of affordable housing, this threshold would be surpassed.
14. Policy CP9A of the Core Strategy provides support for 100% affordable housing schemes outside but adjacent to the Development Limits of the Service Centres of Bedale and Easingwold, the Service Villages (with the exception of Great Ayton), the Secondary Villages and sites related to small settlements elsewhere in the District. The supporting text expressly excludes Thirsk from its rural exception approach.
15. As Policy CP9A does not apply to Thirsk, it does not preclude 100% affordable housing schemes outside but adjacent to the development limits of this service centre, including Sowerby. Hence, where the policy refers to that development is to be small in scale also has a limited bearing. Policies CP9 or CP9A also do not require affordable housing need to be met on allocated land.
16. Policy DP13 of the Development Policies DPD concerns the mix of dwellings in terms of size, type and tenure. In coming to a view on mix, a number of criteria are to be taken into account, including the Council's Housing Needs Study, other local housing needs information and current market conditions. Policy DP15 also sets out a number of criteria for consideration where a housing development makes provision for affordable housing in the context of Policies CP9 or CP9A. These include affordability, perpetuity arrangements, local connections and a balance in the different types of affordable housing provision.
17. The Council's Housing and Economic Development Needs Assessment (2018) (HEDNA) sets out an annual need for 55 net affordable dwellings to be provided per annum from 2016/2017 to 2035. The appellant considers that the overall need for affordable housing should be front loaded during this time period. The Council's position would not in any event impede such an approach in its planning decision-making because it confirmed at the hearing that it treats the figure as a 'floor'. As a result, this does not prevent a higher number of affordable housing units coming forward sooner.

18. It is agreed between the main parties that there were 1,000 households on the Housing Register as of 1 April 2019. The appellant's evidence points to a steady increase since then and a not insignificant number of applicants have also expressed preference for housing in the Thirsk or Thirsk rural area. Even if applicants can express more than one preference, this does not indicate that need has in any way diminished since the publication of the HEDNA. It would take some time to address the housing needs of this number of households if the HEDNA annual figure is the basis of affordable housing delivery. This would seem to run contrary to the necessity to provide affordable homes for the households who are in most need.
19. Such a situation is compounded by affordability matters. Those on lower salaries, who would be most likely to benefit from affordable housing, would need to find nearly 9 times their income to fund a home. House prices and rents in the Council area are also said to be higher than the national average. There is not substantive evidence to the contrary on these matters. Whilst re-letting of affordable housing would, to a degree, provide more provision, overall, there is a persuasive case over need based on the housing register and these other affordability matters.
20. The Council's plan-led approach to delivering affordable housing has clearly yielded some success. Whilst it was apparent at the hearing that there is not agreement between the main parties over the exact number, based on the evidence before me, overall delivery is in excess of the HEDNA annual rate. However, for the reasons that I have set out, the annual rate should be seen as a minimum as regards planning decision-making. Hence, the overall delivery does not prohibit further sites coming forward where there is need.
21. There are limited opportunities for affordable housing to be delivered in Thirsk and Sowerby, in particular on previously developed land, from what I heard at the hearing. I was referred to sites where less or no affordable housing was provided due to viability considerations. Whilst such an approach was no doubt justified, this does not reduce the affordable housing need. In this regard, Sowerby Gateway is delivering less than the 40% target under Policy TM2 of the LDF Allocations Development Plan Document (2010), notwithstanding that the number of additional units that may be achieved following interim and final viability reappraisals is unknown. With the proximity of the site to this development, it would seem to be ably located to assist in reducing the current shortfall.
22. The Affordable Housing Supplementary Planning Document (2015) (Affordable Housing SPD) provides guidance on the balance of tenures, citing 70% social rented and 30% intermediate provision. These figures represent an interim update on the 50% provision split that is set out in Policy DP15. The proposal does not correspond to the balance of tenures under the Affordable Housing SPD because it also includes rent to buy. This form of affordable housing now falls under the definition, as is set out in the Framework. Thus, when the balance of tenures is compared against more recent national policy, including rent to buy, it would not be unacceptable.
23. In respect of housing mix, the proposal constitutes 2 and 3 bedroom units. The Affordable Housing SPD states that housing need is generally for this number of bedrooms, although I was also informed that there is strong demand for one bedroom units in Thirsk. The mix needs to be considered as a

whole and the proposal would include flats and bungalows which may well be appropriate for smaller households. The provision of bungalows would also seem to accord with the Affordable Housing SPD where it refers to the District having an increasingly older population. The Size, Type and Tenure of New Homes Supplementary Planning Document (2015) also sets out a need for 2 bedroom bungalows, as is proposed.

24. In considering all of the information before me, there is not an elementary reason why the proposal would not reflect current market conditions by way of tenure balance and mix.
25. The Council's reason for refusal also raises matters of perpetuity, although the relevant provisions are now provided for in the UU. With regard to what the receipts from rent to buy would be used for, it would seem likely that they would be reinvested in the delivery of affordable housing as the appellant is a housing association and from what I heard of the funding arrangements.
26. With regard to whether a local housing needs study has been presented with the proposal, a substantial amount of evidence on affordable housing need is before me. Based on the totality of that evidence, I am satisfied that the proposal would contribute towards meeting local affordable housing need. Matters in relation to whether the entry level exception sites approach under the Framework applies does not alter my view over need.
27. I conclude that it has been adequately demonstrated that there is a proven need for affordable housing. As such, the proposal would comply with Policy CP9 as regards the affordable housing provision proposed, and with Policies DP13 and DP15 in relation to housing mix and the arrangements for promoting and maintaining affordable housing. For the reasons that I have set out, Policy CP9A is of limited relevance to my conclusion due to the location of the site.
28. As I have found that there is a proven need for affordable housing, I also conclude that the proposal would be in a suitable location for housing with regard to the Council's spatial strategy. The evidence does not suggest that such a need can be met in a settlement in the hierarchy. As a consequence, it would comply with Policies CP4 and DP9. It would also justify the development of this greenfield site under Policy CP1, and be supported as an exceptional case in terms of this policy due to need and the level of affordable housing provision that would result from the proposal.

Biodiversity

29. Policy CP1 sets out that proposals will be supported if they promote and encourage or protect and enhance biodiversity, amongst its other criteria. Policy CP16 of the Core Strategy takes a similar tact and also states that any necessary mitigating or compensatory measures must be provided to address potential harmful implications of development. Policy DP31 of the Development Policies DPD states that permission will not be granted for development which would cause significant harm to sites and habitats of nature conservation, geological or geomorphological value, and species that are protected or under threat, amidst other matters.
30. Chapter 15, paragraph 170 of the Framework sets a higher bar than the abovementioned development plan policies. Whilst it is also concerned with

contributing and enhancing the natural environment and minimising impacts, it also provides for net gains for biodiversity.

31. The Preliminary Ecological Appraisal (March 2020, Revision A) (PEA) identifies that the linear area of trees and hedgerow along the north boundary of the site has the potential to support foraging and commuting bats, albeit there was no evidence of bat roosts. The site is also said to provide bird nesting habitat and it has the potential to support hedgehogs. Much of the site is improved grassland. It is not the subject of ecological designations.
32. The main ecological value of the site are the trees and hedgerow along the north boundary because of their potential usage by bats. The proposal would result in the loss of part of this feature. In terms of mitigation, the appellant proposes bat boxes, controls over lighting and ongoing maintenance of the remaining part of the hedgerow and trees. Bats are a protected species and if it is assumed that there is a reasonable likelihood of bats being affected in this part of the site, then the mitigation would ably deal with this impact.
33. The proposal would also result in the loss of the entire hedgerow along the south boundary of the site, the improved grassland and the occasional trees within the site. It is fair to say that these are of lesser ecological value. The appellant proposes bird boxes, habitat for hedgehogs and tree planting. Disturbance to breeding birds would, in itself, be an offence under the Wildlife and Countryside Act 1981, and so this provides adequate protection in this regard. The hedgerow along the west boundary would be near entirely retained.
34. The Council has referred to the age of the survey that the PEA refers to. The PEA does however state that if work has not commenced on the development within 2 years of this survey, then further surveys will be necessary. This is a matter that could be addressed in conjunction with the biodiversity mitigation measures, if reasonable and necessary.
35. I conclude that the proposal would not have an unacceptable effect on biodiversity interests and so it would comply with Policies CP1, CP16 and DP31, when the level of impact and the proposed mitigation are considered.
36. I am not, though, persuaded that the mitigation can be said to amount to a net gain for biodiversity compared to the current habitat value of the site. Hence, it would not comply with paragraph 170 of the Framework in this regard.

Recreation

37. Policy CP1 also concerns the health and social well-being of the population. Policy CP16 is also of relevance insofar as recreation facilities can be seen as part of the District's natural and man-made assets. Similarly, Policy DP1 of the Development Policies DPD is of relevance to the extent that recreation can be viewed as an aspect of protecting amenity.
38. The Council have also identified Policy DP37 of the Development Policies DPD as a key policy of relevance. This sets out that, amongst other considerations, support will be given to sport and recreational activities by retaining, protecting and enhancing all types of open space with an existing recreational use.
39. The site is presently used for recreation by the public as an informal amenity green space. Gaps in the hedgerows permit access and there are a number of

informal paths that have been formed in the grassland area of the site. With its proximity to the neighbouring residential area, it is unsurprising that residents use it for dog walking and the like. I was also informed that the use is extensive and it is viewed as a community asset, as well as that it has had additional value during the Covid-19 pandemic.

40. There is no formal access permitted, though, based on the evidence before me. The Council at the hearing described the access as 'custom and practice', and this seems a fair description. A site that is in private ownership can clearly be of recreational value, however, what is of greater relevance in this case is whether the land can be accessed. This would seem to be able to be restricted at any time by the landowners. This considerably lessens its recreational value and its public amenity.
41. The proposal includes land on-site that would be used as open space. Whilst I agree that it would be of no great overall size and that its use would be tempered somewhat by the proposed pumping station and other types of infrastructure, it would offer greater permissible access than the current unofficial arrangements for local residents, as well as providing a recreation facility for the future occupiers. The UU makes provision for its use as a public facility and offers a mechanism in respect of what is to be provided as regards its function. A formal access would also be created from the PROW. There is not compelling evidence before me that such an approach would be contrary to the Open Space, Sport and Recreation Supplementary Planning Document (2011).
42. In addition, compensatory provision for the loss of the former playing field is proposed by way of a financial contribution towards a new playing field at the Sowerby Sports Village, which is part of the Sowerby Gateway development.
43. In relation to the openness value of the site, this is of a limited nature and largely restricted to the dwellings that have an aspect across it. There is, or will be shortly, housing on three sides of the site. Whilst the views from those properties would change, it would not amount to an untoward loss of recreation value.
44. The Council also pointed to a potential value of the site as regards tree cover, but the vast majority of it is grassland and there is not a reason to believe it would become a tree planted area, if permission was to be withheld. In relation to any criticism of the appellant not providing an assessment of the site's recreational role, this was sufficiently explored at the hearing in order for me to come to a view.
45. I conclude that the proposal would not have an unacceptable effect on the recreational value of the site. As a result, it would comply with Policies CP1, CP16 and DP1 as far as they concern recreation matters, including health and well-being, natural and man-made assets and the related amenity. Within the context of the limitations of the existing recreational use, the proposed on-site provision and the off-site financial contribution, the proposal would also comply with Policy DP37.
46. The Council's related reason for refusal also refers to a number of LDF Spatial Objectives. They underpin the development plan policies. As I have found the proposal is in accordance with the relevant policies, it would also not conflict with the objectives cited, namely 1,8,9, 11 and 12.

Character and Appearance

47. Policy CP17 of the Core Strategy and Policy DP32 of the Development Policies DPD both concern a high quality of design and matters related to the local context, character and distinctiveness. Chapter 12 of the Framework also seeks to achieve high quality buildings and places, and good design.
48. The existing residential development in the vicinity of the site is a mix of mainly detached, semi-detached and bungalow properties. The layout is fairly spacious and this is reflected in the density in character terms. Most properties have off-street car parking and allow for refuse bin access to their sides.
49. The Council's concerns over the layout of the proposed housing, parking and pedestrian accesses relate to the overall density which it considers leads to a cramped layout. In particular, side access to the proposed dwellings is said to be lacking that would result in either parking being displaced onto the street or wheelie bins left to the front of the properties.
50. Whilst I do not dispute that the proposed density would be higher than the surrounding area, it would not be markedly so and the density would also reflect the number of smaller 2 and 3 bedroom properties that are proposed, compared to the generally larger size of the Saxty Way and Green Lane properties. The proposed dwellings would also be set off at least one side boundary to provide for rear access for bin storage. In terms of manoeuvrability around parking spaces, where the parking would be provided at the front of the properties, or side to side, this would create a greater amount of space in order to accommodate these movements.
51. I accept however that where tandem parking provision is proposed, it would be far tighter with the proportions of the spaces. Even though having to slightly re-position cars on a driveway to accommodate bin movements is not unusual on domestic properties, it would not be ideal. I am less convinced, though, that this would lead to notable levels of cars been parked on the road because most people would still likely prefer to be parked on their own driveway.
52. Such arrangements are said to already exist on Sowerby Gateway, which the Council no longer consider to be the preferable solution. Still, when I visited this development there seemed to be few examples of bins been left to the fronts of properties. The detriment caused by the proposal in this respect to the appearance of the residential environment would likely be of a limited nature.
53. An attribute of the local character of Saxty Way is the row of semi-detached properties on the western side of the western arm of this road. These properties are fairly uniform, including with regard to their building line. The proposed dwellings that would extend this line of properties would be set forward of them. As the first dwellings would be semi-detached bungalows, the effect of this variation from the building line would not be visually pronounced. The proposed semi-detached houses would then maintain the same building line as the proposed bungalows. This arrangement would not unduly detract from the local character.
54. The degree to which the proposed enclosure around the pumping station was in contention between the main parties lessened at the hearing because the

appellant explained that there may be alternatives to the proposed palisade fencing. There was a general agreement between the parties that it could be dealt with by way of a planning condition. I see no reason to disagree as the potential alternatives that were discussed would be less visually prominent and more compatible with the residential character.

55. The Council has also raised broader concerns over the loss of the existing green character of the site. Where the hedgerow would be lost along the southern boundary, much of it abuts the boundaries with neighbouring properties with public vantage points restricted to the road ends. Whilst the site is open, it is not countryside in character terms with its proximity to the existing development, and that which is under construction. The rural aspect is limited. Green Lane also forms a strong boundary of the site to the north. The proposal would be contained and not unacceptable in these terms.
56. The effect on the character and appearance of an area also needs to be considered in the round. Where an individual element may be lacking, this does not mean that the sum total effect would be unacceptable. The tandem parking arrangements and the effect on refuse storage would raise a degree of concern. However, in all other respects it would achieve a well-designed place and this would favour the proposal. As a consequence, I do not find particular conflict with the National Design Code in supporting high quality design, in overall terms.
57. In taking these considerations together, I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. Hence, it would comply with Policies CP17 and DP32 as it would achieve a high quality design that adequately respects its context, as well as with the similar design aspirations of the Framework in achieving well designed places.

Other Considerations

Unilateral Undertaking

58. The UU concerns the open space land on-site, affordable housing and the financial contribution to the playing pitch. The Community Infrastructure Levy Regulations (as amended, 2019) (CIL) require that any planning obligation providing for contributions must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These same tests are set out in the Framework and are to be applied to all planning obligations.
59. The open space land is required in order to provide a suitable living environment for residents so that the proposal would accord with Policies CP17 and CP19 of the Core Strategy, and DP33 and DP37 of the Development Policies DPD. It would also provide for maintenance of the land and for public access. In the event of non-compliance, a financial contribution would be available for the Council to draw on in order to implement the works. This obligation meets the CIL tests, as well as those under the Framework.
60. The affordable housing schedules relate to matters which largely concern tenure, occupation and perpetuity. They are required so that the proposal would meet the identified housing need and to comply with Policies CP8 and

CP9 of the Core Strategy, Policy DP15 of the Development Policies DPD and the Affordable Housing SPD. The obligations meet the tests in the Framework.

61. The financial contribution of £95,000 is required in light of the former use of the site and as the proposal would place additional demand for playing pitch provision in order that it would accord with Policy CP19 of the Core Strategy and Policy DP37 of the Development Policies DPD. This obligation meets the CIL tests, as well as those under the Framework.
62. The Council are not signatories to the UU and so are not bound by it. The Council gave me sufficient assurance at the hearing that they would act on the obligations that it contains. As a consequence, I find that the UU would be used for its intended purposes and it attracts significant weight in my decision.

Emerging Local Plan

63. The Council's emerging Local Plan is currently at the Examination stage. Based on what I was told at the hearing in relation to the outstanding matters and that the Examining Inspector's report has not been received, the emerging Local Plan attracts limited weight in my decision. I am also aware that the site was not taken forward during the preparation of the Local Plan, albeit from what I heard at the hearing there is a distinction in that the proposal before me comprises 100% affordable housing provision.
64. I have been referred to Policies HG3 and HG4 which concern, respectively, affordable housing and housing exception sites. I am not persuaded that they would alter my views on these considerations due to their approach, even if they could be attributed full weight. With regard to Policy E4 which concerns green infrastructure, I have found the proposal not to be unacceptable with regard to biodiversity, aside from net gain, and recreation interests.

Other Matters

65. Vehicular access to the site would be taken from both arms of Saxty Way. Most of the proposal would be accessed through the western arm. The Highway Authority (HA) raise no objection to such an arrangement with the number of dwellings now proposed, the likely traffic generation and the parking provision. I concur with such a view. There is also not an applicable reason why these access arrangements would be unsuitable for emergency vehicles.
66. Interested parties have also raised concerns over congestion at the junction of Saxty Way and Topcliffe Road, in particular with its proximity to local schools. Parking stress occurs greatest at the time of either pupils arriving or departing from the schools, as was confirmed during the submissions to the planning application. This would be however for fairly short durations and the traffic generation resulting from the proposal would be unlikely to cause particular capacity issues on Topcliffe Road, as this is a major throughfare, nor undue delays because they would quickly dissipate. Sufficient visibility at the junction is also achievable, as was also confirmed during the course of the planning application. The proposal would not be unacceptable in highway safety terms.
67. In relation to construction related matters, this can ably be dealt with by way of a management plan through a planning condition to reduce the temporary impacts on the living conditions of local residents by way of noise, disturbance and dust. The noise from when the proposal would become occupied would be domestic related and so it would be no different from the existing residential

area that borders the site. The outlook of residents that look over the site would clearly change. The distances between the proposal and the existing dwellings would though be sufficient so as to maintain a reasonable visual impact, as well as in respect of other living conditions matters.

68. With the site's location on the edge of Sowerby and Thirsk, it would benefit from good accessibility to the local services and public transport options. There are also a number of services that have been developed as part of the Sowerby Gateway development. There is also not strong evidence that the proposal would place an unacceptable strain on local services.

Planning Balance

69. In relation to the benefits of the proposal, the provision of 47 affordable housing units attracts significant weight. It would also have a greater benefit in enabling provision for those who would not be able to obtain general market housing. There would be the associated social benefits in providing housing for different groups in the community. The proposal would also be deliverable in that the site is available now and offers a suitable location for development. The provision of affordable housing would thus be achievable.
70. Notwithstanding that it is not in dispute that the Council can demonstrate a 5 year supply of deliverable housing sites, the proposal would accord with the Government's objective of significantly boosting the supply of homes. The Framework also points to that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly, as would likely apply in this case. Windfall sites are also to be supported within existing settlements for homes. With development on 3 sides of the site, this reasonably applies in this case. The Framework does not refer to the restrictions that development limits apply in this way.
71. There would also be economic benefits during construction and with the associated employment, the spend of the future occupiers and the receipts that the Council would receive. This would be in accordance with the identified need under the Framework to support economic growth and productivity.
72. These benefits in relation to boosting the supply of homes and the economic considerations attract moderate weight. Other matters raised apart from net gains for biodiversity attract neutral weight as they would be necessary for the proposal to be not unacceptable in planning terms.
73. I have identified that the proposal would comply with the development plan policies that I have been referred to. I also find that it would comply with the development plan as a whole because it is these policies that are central to my decision making. Whilst I have found that the proposal would also comply with chapter 12 of the Framework, it would not comply with chapter 15 insofar as under paragraph 170 it would not provide net gains for biodiversity. This harm attracts moderate weight in my decision.
74. When taken together, the benefits would outweigh the harm and this supports the grant of planning permission. That the proposal would comprise 100% affordable housing provision is key to my view in the planning balance. It therefore follows that even if I was to consider that the development plan policies which are most important for determining the application are out-of-

date under paragraph 11 of the Framework, any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal would accord with the presumption in favour of sustainable development.

Conditions

75. In addition to the timescale for implementation, I have imposed a condition concerning the approved plans for the purposes of certainty. I have also imposed a condition by way of the boundary treatments. This is in order to protect the character and appearance of the area, the living conditions of the neighbouring residents and the future occupiers, and biodiversity interests.
76. Conditions are also imposed with regard to the levels, also for the reason of protecting living conditions, and concerning a biodiversity plan so that such interests are protected. A trees condition is imposed in the interests of protecting their amenity value. A condition is also imposed with regard to unexpected land contamination in the interests of protecting public health.
77. I have also imposed a condition which controls the pumped rates of foul and surface water, in the interests of providing satisfactory drainage. I have also imposed conditions that the Lead Local Flood Authority requested during the course of the appeal. This is in the interests of minimising flood risk and providing satisfactory drainage.
78. A condition is imposed in relation to the highway layout and construction for the reason of highway safety. A construction method statement condition is imposed, also in order to protect the living conditions of the local residents during construction. Controls over working hours during construction are also imposed through a condition for the same reason.
79. Conditions are imposed by way of the external materials of the development and the bin storage, both in order to protect the character and appearance of the area. A condition in relation to a landscaping scheme is also imposed for the reason of protecting the character and appearance of the area, and to protect the amenity value of the retained hedgerows. I have not imposed a separate condition concerning the existing boundary hedgerow as this is already dealt with through the landscaping scheme and the UU open space land schedule.
80. I have also not imposed a condition concerning visibility splays at the junction of Saxty Way and Topcliffe Road. This is not land that is in the control of the appellant and is remote from the site, and so such a condition would not be reasonable. Whilst I understand the rationale for a condition, how control over obstructions in the splay would be enforced through planning controls is not clear, given this would seem to be highway land. In relation to the splay itself, it has already been demonstrated that this is achievable and my attention has not been drawn to what associated additional works may be required, if any. A condition concerning an external lighting scheme is also not reasonable and necessary as it is a matter which is already covered by the biodiversity plan.
81. There was also some debate during the hearing about the use of pre-commencement conditions. The Planning Practice Guidance: *Use of Conditions* cautions against the use of such planning conditions unless there is a clear

justification. Hence, I have avoided such conditions but have utilised a groundworks based approach so as not to prevent commencement of development taking place before the requirements of the conditions need to be met.

82. Where I have altered the wording of the remainder of the conditions put forward, I have done so in the interests of precision and without changing their overall meaning.

Conclusion

83. I have found that the proposal would accord with the Council's spatial strategy and there is an identified need for affordable housing. It would not have an unacceptable effect on biodiversity interests, the recreational value of the site and on the character and appearance of the area. Where I have found harm by way of not achieving net gains for biodiversity, this would be outweighed by the benefits, in particular as an affordable housing scheme.
84. The proposal would comply with the development plan, when considered as a whole. There are no material considerations which indicate that a decision should be taken other than in accordance with the development plan. Having regard to all matters that have been raised, the appeal should be allowed, subject to the conditions.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Hardy	Counsel
Jonathan Saddington	Saddington Taylor Limited
Sarah Robson	Karbon Homes
Steve Jackson	Karbon Homes
James Stacey	Tetlow King Planning
Jamie Roberts	Tetlow King Planning
Simon Bell	Norr Architects
Chris Devitt	Ward Hadaway LLP
Steve Bell	Gus Robinson Developments

FOR THE LOCAL PLANNING AUTHORITY:

Jon Berry	Chief Planning Officer
Tim Wood	Development Manager
Tony Whitaker	Housing Services Manager
Ann Rawlinson	Development Manager

INTERESTED PARTIES:

Philip Smith	Local Resident
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 Dwg No: (00)350 Rev F Proposed Landscape Plan – Total 47no. Units
- 2 Preliminary Ecological Appraisal For Land Adjacent To Saxty Way, Sowerby, Thirsk March 2020 Revision A
- 3 Hambleton District Council, Sustainable Development Supplementary Planning Document (2015)
- 4 Proposed Conditions Schedule (as amended, submitted 20 May 2021)
- 5 Draft Unilateral Undertaking under Section 106 of the Town and Country Planning Act (as amended, submitted 20 May 2021)
- 6 Email from Tim Wood, Hambleton District Council sent 20 May 2021 12.10 concerning affordable housing delivery (chain of emails)
- 7 Email from Jamie Roberts, Tetlow King Planning sent 20 May 2021 12.20 concerning affordable housing delivery

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE HEARING

- 1 Site visit locations
- 2 Unilateral Undertaking under Section 106 of the Town and Country Planning Act (as executed, dated 27 May 2021)
- 3 Email from the Council sent 7 June 2021 regarding the executed Unilateral Undertaking

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in Annex 1.
- 3) No groundworks of the development hereby permitted shall commence until details relating to boundary walls, fences, hedgerows and other means of enclosure for all parts of the development and a programme for implementation have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter shall be retained.
- 4) No groundworks of the development hereby permitted shall commence until detailed cross sections have been submitted to and approved in writing by the Local Planning Authority showing the existing ground levels in relation to the proposed ground and finished floor levels for the development. The levels shall relate to a fixed Ordnance Datum. The development shall be constructed in accordance with the approved details and thereafter shall be retained.
- 5) No groundworks of the development hereby permitted shall commence until a biodiversity mitigation and enhancement plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include the installation of bat boxes, bird boxes, habitat for hedgehogs and lighting controls to protect the bat corridor along Green Lane West and a programme for implementation. The development shall be carried out in accordance with the approved plan and thereafter be retained.
- 6) No works to trees on site shall be carried out until a plan has been submitted to and approved by the Local Planning Authority showing all existing trees which are to be felled or retained, if not in accordance with the Arboricultural Impact Assessment and the Arboricultural Method Statement, together with the positions and height of protective fences, the areas for the storage of materials and the stationing of machines and huts, and the direction and width of temporary site roads and accesses. The development shall be carried out in accordance with the approved details.
- 7) If contamination is found or suspected at any time during development, all works shall cease and the Local Planning Authority shall be notified in writing immediately. No further development shall be undertaken until a detailed site investigation and risk assessment, having regard to current best practice, has been carried out. Where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority before any further development occurs. The approved scheme shall be carried out before the development is resumed or continued.
- 8) The site shall be developed with separate systems of drainage for foul and surface water on and off site. Furthermore:
 - a) The pumped rate of foul water to public sewer for the whole site shall not exceed 4 (four) litres a second; and

- b) The pumped rate of surface water to public sewer for the whole site shall not exceed 4 (four) litres a second.
- 9) No groundworks of the development hereby permitted shall commence until a scheme detailing foul and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme to be submitted shall demonstrate that the surface water drainage system(s) are designed in accordance with the standards detailed in North Yorkshire County Council SuDS Design Guidance (or any subsequent update or replacement for that document). The scheme shall detail phasing of the development and phasing of drainage provision, where appropriate. Principles of sustainable urban drainage shall be employed wherever possible. The works shall be implemented in accordance with the approved phasing throughout the lifetime of the development. No part or phase of the development shall be brought into use until the drainage works approved for that part or phase has been completed.
- 10) No groundworks of the development hereby permitted shall commence until a scheme restricting the rate of development flow runoff from the site has been submitted to and approved in writing by the Local Planning Authority. The flowrate from the site shall be restricted to a maximum flowrate of 4 litres per second for up to the 1 in 100 year event. A 30% allowance shall be included for climate change effects and a further 10% for urban creep for the lifetime of the development. Storage shall be provided to accommodate the minimum 1 in 100 year plus climate change critical storm event. The scheme shall include a detailed maintenance and management regime for the storage facility. No part of the development shall be brought into use until the development flow restriction works comprising the approved scheme has been completed. The approved maintenance and management scheme shall be implemented throughout the lifetime of the development.
- 11) No groundworks of the development hereby permitted shall commence until a suitable maintenance of the proposed SuDS drainage scheme arrangement has been demonstrated to the local planning authority. Details with regard to the maintenance and management of the approved scheme are to include; drawings showing any surface water assets to be vested with the statutory undertaker/highway authority and subsequently maintained at their expense, and/or any other arrangements to secure the operation of the approved drainage scheme/sustainable urban drainage systems throughout the lifetime of the development. The development shall be carried out in accordance with the approved details
- 12) No groundworks of the development hereby permitted shall commence until a scheme, detailing the treatment of all surface water flows from parking areas and hardstanding through the use of road side gullies, oil interceptors, reedbeds or alternative treatment systems, has been submitted to and approved in writing by the Local Planning Authority. Use of the parking areas/hardstanding shall not commence until the works comprising the approved treatment scheme have been completed. Roof water shall not pass through the treatment scheme. Treatment shall take place prior to discharge from the treatment scheme. The treatment scheme shall be retained, maintained to ensure efficient working and used throughout the lifetime of the development.

- 13) No groundworks of the development hereby permitted shall commence until an Exceedance Flow Plan for the site has been submitted to and approved in writing by the Local Planning Authority. Site design must be such that when SuDS features fail or are exceeded, exceedance flows do not cause flooding of properties on or off site. This is achieved by designing suitable ground exceedance or flood pathways. Runoff must be completely contained within the drainage system (including areas designed to hold or convey water) for all events up to a 1 in 30 year event. The design of the site must ensure that flows resulting from rainfall in excess of a 1 in 100 year rainfall event are managed in exceedance routes that avoid risk to people and property both on and off site. The development shall be carried out in accordance with the approved details and thereafter retained.
- 14) No groundworks of the development hereby permitted shall commence until details of the proposed highway layout and construction have been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- a) Road, cycleway and footway construction;
 - b) Lighting;
 - c) Surfacing;
 - d) Materials;
 - e) Drainage;
 - f) Access, turning and parking;
 - g) Traffic calming; and
 - h) A programme for implementation of the works.
- The development shall be carried out in accordance with the approved details and shall thereafter be retained.
- 15) No groundworks of the development hereby permitted shall commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
- a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction;
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - h) access arrangements for emergency vehicles during the construction phase; and
 - i) no use of the eastern Saxty Way access by HGVs during the construction phase.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 16) Hours of working on the development site during the construction period shall be restricted to between the hours of 8 am and 6 pm Mondays to Fridays, and the hours of 8 am and 1 pm Saturdays, with no working on Sundays or Bank or Public Holidays.
- 17) No groundworks of the development hereby permitted shall commence until details of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved materials.
- 18) No groundworks of the development hereby permitted shall commence until a scheme for the storage and collection of bins has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the occupation of the dwelling to which it relates and be thereafter retained.
- 19) No groundworks of the development hereby permitted shall commence until a detailed landscaping scheme indicating the type, height, species and location of all new trees and shrubs, and arrangements for the ongoing maintenance of the retained hedgerows along the northern and western boundaries of the site, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme prior to the occupation of the dwellings hereby approved. Any trees or plants which within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.

Annex 1 – Approved Plans (all 'date received' 03/04/2020)

<u>Drawings</u>	<u>Ref.</u>
Tyneside Flats Proposed GA Elevations Semi Detached	(00)565 Rev. C
Site Location Plan	(00)102 Rev. A
Existing Site Plan	(00)100 Rev. C
Tyneside Flats Proposed GA Plans Semi Detached	(00)560 Rev. D
Longsections	003-01 Rev. A
Engineering Layout	003-01 Rev. B
Proposed Site Plan Total 47no. Units	(00)300 Rev. T
Proposed Site Plan Total 47no. Units with Overlaid Topo Survey	(00)301 Rev. B
Existing Site Plan with Topo Survey	(00)101 Rev. C
Arboricultural Impact Assessment Tree Protection Plan (TPP)	AIATPP Rev. A
Arboricultural Method Statement Tree Protection Plan (TPP)	AMSTPP Rev. A
House Type 2B3P – 2 Bed 2 Storey Semi Detached / Terrace	(00)500 Rev. E
Two Bed Bungalow Bungalow Housetype	(00)550 Rev. A
House Type 3 – 3 Bed 2 Storey Semi Detached Terrace	(00)320 Rev. E