
Appeal Decision

Inquiry Held on 5 July 2021

Site visit made on 12 July 2021

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2021

Appeal Ref: APP/C2741/W/21/3271045

Land at Boroughbridge Road, west of Trenchard Road, York

- 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 on behalf of York Housing Association, Karbon Homes Limited and Karbon Developments Limited against the decision of City of York Council.
 - The application Ref 20/00752/FULM, dated 14 April 2020, was refused by notice dated 7 December 2020.
 - The development proposed is 60 affordable homes, comprising a mix of detached, semi-detached, terraced properties and bungalows with associated infrastructure, parking, gardens and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the appeal stage it was agreed that the site address and description of development cited on the Council's decision notice are more accurate and these are used in the heading above.
3. A duly signed section 106 legal agreement was submitted during the Inquiry setting out, amongst other things, mitigation for educational capacity. I take this into account in reaching my decision. Although the Council considers that this planning obligation satisfies their second reason for refusal, it is still a matter for this appeal.
4. This appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan in this case comprises only the retained policies and key diagram relating to the Green Belt within the Yorkshire and Humber Regional Spatial Strategy (the RSS), and the Upper and Nether Poppleton Neighbourhood Plan (the Neighbourhood Plan). The Council does not have an adopted local plan. It is common ground that the emerging Local Plan has not reached a stage which can be afforded any material weight.
5. The National Planning Policy Framework (the Framework) was revised subsequent to the close of the Inquiry. The main parties have been given the opportunity to draw my attention to any material changes which would impact on their respective cases and the appeal has been determined accordingly.

Main Issues

6. The main issues are:

- whether or not the appeal proposal is inappropriate development in the Green Belt for the purposes of the Framework and development plan;
- the effect of the appeal proposal on the openness of the Green Belt and its purposes;
- whether or not there is any other harm that would result;
- whether or not any other considerations exist and the weight that should be afforded to them; and
- if inappropriate development, whether or not any harm to the Green Belt by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the appeal proposal.

Reasons

Whether or not inappropriate development

7. Saved policies YH9C and Y1 of the RSS establish the principle of the York Green Belt. The RSS key diagram illustrates the general extent of the Green Belt, but it does not determine what the detailed boundaries should be. These can only be set through the Local Plan and this is currently in progress but not yet complete. The appeal site falls within the Green Belt shown on the Proposals Map for the York Development Control Local Plan (2005). However, that plan has never been adopted and therefore does not form part of the development plan. The 'made' Neighbourhood Plan also depicts the RSS's general extent of the Green Belt and the appeal site clearly falls within it.
8. The lack of adopted detailed boundaries is insufficient justification to arbitrarily exclude sites from being treated as falling within the general extent of the Green Belt. This approach has been taken in other appeals within the Council's area and is agreed by the main parties. Consequently, in addition to the development plan context, I find that national policy regarding development in Green Belt applies here.
9. I agree with the common ground that the proposal does not represent any of the exceptions contained in paragraphs 149 and 150 of the revised Framework. The appeal proposal therefore constitutes inappropriate development in the Green Belt. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Moreover, Policy PNP1 of the Neighbourhood Plan states that inappropriate development within the general extent of the Green Belt will not be supported except in very special circumstances. Consequently, irrespective of the absence of detailed Green Belt boundaries, whether or not there is conflict with that 'made' development plan policy depends upon whether very special circumstances are demonstrated.

Openness of Green Belt

10. A residential part of the City known as Acomb bounds the appeal site on one side whilst a dwelling with grounds and arable land bound another. A day

nursery complex is located beyond that arable land. The site itself comprises an undeveloped, irregular shaped arable field which bounds the A59, a main approach to and from the City. Aside from its perimeter hedgerows and trees, it is open in character and appearance.

11. The appeal site is largely obstructed from view when travelling along the A1237 in either direction. However, its proximity to the A59 route gives the appeal site a localised but nonetheless high prominence on approach in either direction. The appeal site's openness along this route is further reinforced by the contrasting development in the vicinity of the junction between the A59 and the A1237 and beyond, all of which is well screened from the appeal site. Consequently, when travelling in either direction along the A59 the appeal site provides an important reminder of York's open countryside context which defines this historic City's setting.
12. The site adjoins the open countryside which extends largely uninterrupted down to the village of Knapton. It provides an unfettered agricultural foreground to this wider tract of open countryside when viewed from the A59. Views back towards the site from Knapton are more restricted by the distance, topography and existing planting. Nonetheless, when viewed from parts of Acomb, the site provides a notable undeveloped visual break with the built form located on the opposite side of the A59. These vistas also contribute to the openness of the City's setting.
13. The rurality of the area was explored during the Inquiry. Although this is not a deeply rural area, the undeveloped, agricultural nature of the appeal site and the open land beyond clearly have the credentials of countryside as opposed to transitional land. Despite the surrounding development those attributes contribute significantly to openness. The appeal proposal would introduce residential development onto much of this open site. Despite the proposed public open space, landscaping and remaining arable land, the appeal proposal would still result in a considerable loss of openness.
14. The appeal proposal would consolidate the sporadic built-up form which exists along this side and stretch of the A59. This would reinforce the linear pattern of development that has evolved along this main approach to the City. The site's contribution to the openness of the wider Green Belt extent would be lost. Given the extent of the built frontage proposed along the A59, that important open context for the City would be deferred to beyond the A1237 both spatially and visually. That would undermine the compactness of the City which forms part of its special character.
15. The site is not well-contained or distinct from the character and appearance of the wider extent of the Green Belt. The appeal proposal would cause a permanent change which, because of the site's location and appearance coupled with the proposal's built nature and scale, would be both spatially and visually apparent.
16. I conclude that this permanent reduction in openness would impact upon the integrity of the wider Green Belt. Overall, this amounts to considerable harm which would be in addition to the harm incurred by reason of inappropriateness. The existing status of the emerging Local Plan does not diminish the weight that must be afforded to any harm to the Green Belt.

Green Belt purposes

17. The purposes of this Green Belt were explored during the Inquiry in the context of paragraph 138 of the Framework. The supporting text of the RSS confirms that this Green Belt is an important tool to ensure that growth is managed in a way which safeguards the special character and setting of this historic city. Moreover, the supporting text to the Neighbourhood Plan confirms that this part of the Green Belt forms an important part of the special open and agricultural character of the setting of this nationally significant historic city. It specifically recognises that the open land between the City and the villages of Nether and Upper Poppleton, which includes the appeal site, is an important area which is already narrow in places.
18. Given my earlier findings on the resulting pattern of development along the A59, I find that the appeal proposal would conflict with purpose (a) in terms of checking the unrestricted sprawl of large built-up areas. Furthermore, the resulting built form would have the effect of reducing spatial and visual separation between the urban edge of the City and the outlying villages of Upper and Nether Poppleton. This would conflict with purpose (b). As the appeal scheme would result in the loss of a significant part of countryside it would conflict with purpose (c) which seeks to assist safeguarding the countryside from encroachment. Furthermore, the open countryside here is a defining feature of the setting and special character of York. Therefore, although it is common ground that vistas of York Minster would not be affected, the appeal proposal would conflict with purpose (d) which seeks to preserve the setting and special character of historic towns.
19. In terms of assisting in urban regeneration, by encouraging the recycling of derelict and other urban land, given the scale of the appeal proposal and the absence of a development strategy capable of carrying material weight, I do not find any material conflict with purpose (e). However, even if I were to find that the identified conflict with those 4 other Green Belt purposes is limited, overall, it would still amount to conflict with the fundamental purposes of current national Green Belt policy which is harmful.

Other matters

20. No other harm has been advanced by the Council. From the evidence before me, it is apparent that a planning condition could be necessarily imposed to effectively manage any unexpected archaeological interests within the site.
21. It has been demonstrated that the necessary requirements relating to educational mitigation, leisure provision, sustainable travel and affordable housing provision are reasonable and would be secured through the submitted section 106 legal agreement. The legal agreement is compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and its form and content are acceptable. As this legal agreement overcomes the Council's second reason for refusal, it weighs in favour of the appeal proposal. Aside from affordable housing and sustainable transport measures, which I deal with later, as measures to mitigate the impacts of the appeal proposal these do not constitute benefits to be weighed in the planning balance.
22. The appellant has also advanced that the appeal proposal would be acceptable in terms of air quality impacts, flood risk, biodiversity, design, open space and play provision. The submitted evidence does not indicate to me that there are

any conflicts with local and national planning policies in these regards, subject to the imposition of the planning conditions discussed during the Inquiry. However, the evidence before me does not convince me that any of these would constitute benefits of the scheme over and above securing a satisfactory development.

23. Based on the evidence before me, I conclude that no other harm would arise from the appeal proposal.

Other considerations

Housing land supply

24. The degree of shortfall in the supply of housing land is in dispute here, although during the Inquiry the main parties were able to agree that this fell within a range of between 2.79 years and 3.45 years. Either scenario is poor, representing a substantial shortfall in housing land supply within the Council's area. However, the differential between these positions is not large and is not something that this decision turns on. This legacy supply issue has translated to inadequate housing delivery which is evident through the Council's failure to meet the national Housing Delivery Test. However, the Council's housing delivery position means that it is required to prepare an Action Plan to help address housing issues and at the time of the Inquiry this had not been completed. The appeal proposal's scope relates purely to the supply of housing land for the affordable housing sector and its numbers are small relative to the level of shortfall. Nonetheless, in this current overall context, the proposed contribution to the housing land supply would be a significant benefit.

Affordable housing

25. The level of affordable housing needs which should be planned for is disputed. It is clear from the submitted evidence that there is a legacy of a significant mismatch between need and supply in the City area. However, the past shortfall in housing delivery and absence of an adopted Local Plan are not the only forces at play, as losses due to 'Right to Buy' options were also evidenced. Furthermore, new build is only one source of securing an affordable supply, alongside the likes of building conversions and re-use of existing housing stock. There is no dispute between the main parties that York is one of the most unaffordable places to live in the country. Furthermore, it was demonstrated that this affordable need exists within both the locality of the site and the wider City area and shows no signs of arresting. Even on the basis of the Council's calculation, the differential between need and supply is still very large.
26. The appellant has demonstrated that the appeal proposal is capable of being delivered in the short term. An appropriate mix of tenures and types would be secured which match existing identified local needs. It would therefore quickly contribute to increasing the availability and choice of good quality affordable housing in an area where overall housing needs are evidenced as being extreme. The testimonials provided by a number of the City's residents who have recently benefitted from the appellants' other affordable housing stock clearly evidences the very positive human impact that additional affordable housing provision can have on its recipients. A locally elected Member of the Council endorsed the appeal proposal during the Inquiry. Furthermore, being a 100% contribution to affordable needs means the appeal proposal is a less common but efficient means by which to secure such supply.

27. The Written Ministerial Statement regarding Green Belt issued on 17 January 2014 predates the Framework and has not been translated into the Framework or its associate guidance and thus I give it very little weight. However, on the other hand, there is no specific policy or guidance that explicitly elevates and supports the consent of such a scheme of this scale within a Green Belt context. Paragraph 149(f) of the Framework allows for limited affordable housing to form an exception to inappropriate development in the Green Belt. The parties are in agreement that this does not apply here, and I find that the scale of the proposed development, although small relative to local need, would not be limited in this regard.
28. In the absence of an adopted strategic planning approach to this issue, the appeal scheme would make a relatively small but important contribution to addressing the substantial pent up and increasing need that has been evidenced. The submitted legal agreement is fit for purpose to secure this provision. However, the parties agreed at the Inquiry that it could not be guaranteed that the housing would remain affordable in perpetuity.
29. Overall, I conclude that this particular element of the scheme is a very significant benefit of the appeal proposal in light of the particular increasing and persistent needs of the City area. However, contrary to the appellant's stance, it would not be to a degree which commands more than substantial weight.

Local policy position

30. My attention has been drawn to the fact that the appeal site was part of a larger site which the Council was progressing as a draft housing allocation in an earlier version of the emerging Local Plan. However, this is no longer the case and therefore this argument carries no material weight in favour of the appeal proposal.
31. The appellant has also advanced that the absence of detailed Green Belt boundaries coupled with what they consider is the protracted progression of the Council's emerging Local Plan means that the legacy failings of housing land supply and delivery, including affordable provision, will continue indefinitely. However, a planning policy framework to enable the determination of housing proposals such as this does exist. It is common ground that the appeal site falls within the general extent of the Green Belt. The current indications are that the emerging Local Plan is progressing and so the arguments to the contrary are subjective and are not a sufficient basis to influence the outcome of this appeal. In any event, I have already determined the level of benefit which the appeal scheme would provide to the current local housing land supply and delivery position.

Accessibility

32. The appellant considers that a number of proposed housing allocations are unsuitable for affordable provision, not least because of accessibility considerations. It has been demonstrated that the appeal site enjoys an accessible location, being on a main transport route into the City which provides good opportunities to travel by foot, bus and bicycle. The proposed measures to target and further encourage and maintain future sustainable travel by prospective residents is a moderate benefit. However, comparisons with other potential housing sites falls out with the scope of this appeal and has

no material weight. Furthermore, I have already recognised the positive contribution that this site would make in its own right as a benefit to the delivery of a range of affordable, accessible housing units in the short term.

Economic impacts

33. Economic benefits of the appeal proposal which are associated with the construction phase would be relatively short-lived. Although other longer term economic benefits following occupancy are advanced, the appeal scheme does seek to address existing housing needs in the City's area. Consequently, the additional economic benefit that would arise overall attracts limited weight.

Whether very special circumstances exist

34. The appeal proposal would cause harm by reason of inappropriateness, loss of openness and conflict with 4 Green Belt purposes. In line with the Framework, such harm attracts substantial weight. No other harm has been identified. These matters weigh substantially against the appeal proposal. A range of benefits have been demonstrated in terms of the contribution to future housing land supply and affordable housing delivery, economic impacts and accessibility. Based on the evidence before me, I conclude that when taken collectively, these considerations weigh substantially in favour of the appeal proposal.
35. That means that overall, the identified harm to the Green Belt is not, as paragraph 148 of the Framework requires, "clearly" outweighed by these other considerations. The Framework is explicit in this regard. This indicates to me that these considerations do not amount to the very special circumstances required to justify this development within the general extent of the Green Belt.
36. My attention has been drawn to a number of appeal decisions¹, some of which were explored in more detail during the Inquiry where main parties sought to draw comparisons and similarities. In particular, in the case of the Colney Heath decision² where very substantial weight is attributed to affordable housing provision, the housing issues are not that dissimilar in terms of relative severity. However, the actual context of each site is materially different from one another. In that decision no harm was identified to the relevant purposes of including the land within Green Belt, and significantly, unlike the appeal before me, purpose (d) was not found to be relevant in that case. Furthermore, the prospect of no marked improvement to the housing position in the medium term was an influential factor in ascribing very substantial weight in that case. In contrast, York's emerging Local Plan is at an advanced stage and is continuing through the examination process.
37. In the case of the Miller Homes decision³ whilst that site is nearby, unlike the appeal site before me, it is very well-contained by existing urban development on all but 1 side and in that case the main parties and Inspector had concurred it did not serve any Green Belt purposes and therefore did not need to be kept permanently open.

¹ Contained in Section 6 of Core Documents

² CD6.13

³ CD6.1

38. Overall, the decisions advanced show that variable levels of weight can be attributed according to the circumstances of the particular case. It is for the decision maker in each case to undertake a planning balance and I have determined the appeal before me on its own merits. At most, these other decisions represent a non-binding consideration of a possibility of very special circumstances being demonstrated. However, I am satisfied that none are directly comparable with this appeal and the individual circumstances are materially different. Indeed, during the Inquiry the main parties confirmed that neither were aware of any directly comparable decisions. Many fall outside of this Council's jurisdiction and therefore have a different local context. None of them relate to a 100% affordable housing scheme being consented in the Green Belt where affordable housing was found to constitute a very significant benefit alongside other lesser benefits.
39. In view of my findings, the appeal proposal conflicts with Policy PNP1 of the Neighbourhood Plan as very special circumstances have not been demonstrated.

Planning Balance

40. The circumstances surrounding this appeal mean that paragraph 11 (d) of the Framework is engaged. In the absence of very special circumstances to justify this development proposal within the general extent of the Green Belt, the appeal proposal fails to meet the terms of paragraph 11(d) i) of the Framework. Consequently, the presumption in favour of sustainable development is not met.
41. This appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. Since the close of the Inquiry the emerging Local Plan is still at examination stage and as its content may change, I have not given that any significant weight in reaching my decision. Whilst an adopted local plan for the City does not exist, retained Policies YH9 and Y1 of the RSS and Policy PNP1 of the Neighbourhood Plan provide relevant policy coverage against which to determine this proposal. These are not inconsistent with the national Green Belt policy. I have found that the appeal proposal conflicts with Policy PNP1 of the Neighbourhood Plan as very special circumstances have not been demonstrated. Consequently, there is conflict with the development plan and this conflict commands full weight.
42. In summary therefore, in this particular case the other material considerations, including the identified benefits to the supply of housing in the area, do not justify allowing the appeal given the harm that has been identified and the resulting conflict with the development plan when taken as a whole.

Conclusion

43. For the reasons given above, I conclude that the appeal should be dismissed.

C Dillon

INSPECTOR

APPEARANCES

For the Council:

Mr P Robson, Barrister instructed by the City of York Council

He called:

Mrs F Harrison Development Officer of York City Council

Mr J Kenyon Development Management Officer of York City Council

Mrs R Choudury Solicitor of York City Council (conditions and obligations roundtable discussion only)

For the appellant:

Mr D Hardy, Barrister instructed by Mr Steve Jackson on behalf of York Housing Association, Karbon Homes Limited and Karbon Developments Limited

He called:

Ms S Robson of Karbon Homes

Ms J Histon of York Housing Association

Mr J Stacey of Tetlow King Planning

Mr M Lane of DPP Planning

Mr S Jackson (conditions and obligations roundtable discussion only)

Interested parties

Cllr M Pavlovic Councillor of York City Council

DOCUMENTS RECEIVED AT THE INQUIRY

On behalf the Council:

Opening statement accepted 5 July 2021

Correspondence on delivery of York Central site accepted 5 July 2021

Closing submission accepted 9 July 2021

On behalf of the appellant

Opening statement accepted 5 July 2021

Amendment to CD4.1 accepted 5 July 2021

Summary of Ms Robson's evidence accepted 6 July 2021

Summary of Ms Histon's evidence accepted 6 July 2021

Secretary of State's speech to Local Government Association annual conference
6 July 2021 accepted 7 July 2021

Closing submission accepted 9 July 2021

Jointly for the Council and the appellant

Executed s106 legal agreement accepted 7 July 2021

Maps of suggested viewpoints accepted 9 July 2021

Amended Statement of Common Ground to reflect updated schedule of
conditions accepted 9 July 2021

On behalf of Interested parties:

Cllr Pavlovic's statement accepted 5 July 2021