



Appeal Decision

Site visit made on 25 April 2022

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2022

Appeal Ref: APP/E2734/W/22/3293545

Woodland View, York Road, Flaxby HG5 0RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Ben Holmes of Holmes Planning Ltd against the decision of Harrogate Borough Council.
 - The application Ref 21/04716/OUT, dated 27 October 2021, was refused by notice dated 28 January 2022.
 - The development proposed is described as a development of up to 9 eco custom self-build homes with all matters reserved.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs against the Council was made by the appellant and is the subject of a separate Decision.

Preliminary Matters

3. The planning application was made in outline with all matters reserved for future consideration. A change to the description of development was agreed during the determination period to clarify this and is reflected in the above heading. The appeal has proceeded accordingly, and any details shown on the plans have been treated as illustrative.
4. An executed Unilateral Undertaking ("the UU") dated 22 February 2022 has been submitted in respect to several planning obligations. The necessity and appropriateness of the UU is addressed later in my Decision.

Main Issues

5. The main issues for this appeal are:
 - whether or not the appeal proposal is suitably located, with particular regard to the development plan's spatial strategy and site accessibility
 - the effect of the appeal proposal on the character and appearance of Flaxby and its setting
 - the contribution the appeal proposal will make to meeting local housing needs, with particular regard to the supply of custom and self-build plots, affordable housing and the range of units

- whether or not the appeal proposal represents the effective use of land, with particular regard to density and the supply of best and most versatile land
- the effect of the appeal proposal on local ecological interests, with particular regard to protected species and achieving net biodiversity gain
- whether or not there is adequate necessary local infrastructure capacity to support the appeal proposal, with particular regard to village hall and open space provision.

Reasons

Location

6. The Harrogate District Local Plan ("the Local Plan") seeks to direct development to those parts of the area which are capable of supporting growth and provide good levels of accessibility to services and facilities. The appeal site comprises a field which adjoins the built up framework of Flaxby. This is a small village with an absence of services and facilities. The appeal site is located outside of the development limits which are defined by the Local Plan, thereby constituting countryside for the purpose of interpreting planning policies.
7. Consequently, the appeal site falls beyond the locations identified in the Local Plan as being suitable to support sustainable housing growth. However, the appeal site is located within a short walking distance to the local bus service and my attention has been drawn to several existing and proposed local employment sites in the vicinity. Nonetheless, the submitted evidence does not adequately demonstrate good levels of accessibility by public transport. The nature of the local highway and the distances involved makes walking a more unattractive and potentially hazardous option. Neither has a match between the occupants of the appeal scheme and those local employment opportunities been demonstrated.
8. Despite the increase in the availability of online services, the appeal proposal would necessitate residents to regularly travel elsewhere or rely on deliveries to access services and facilities to meet even their most basic daily needs. Consequently, it is very likely that the appeal scheme's occupants would rely heavily on transportation by motor vehicle. An electric vehicle infrastructure strategy for the appeal scheme could be secured through a planning condition. However, it has not been demonstrated that this would adequately mitigate the harm arising from the inevitable unsustainable patterns of travel that would arise.
9. For these reasons, the appeal proposal is not suitably located, with particular regard to the development plan's spatial strategy and site accessibility. By virtue of the site's low level of accessibility and the failure to justify that specific location, the appeal proposal clearly does not align with the area's spatial approach, objective and intent regarding growth to 2035 contained in Policy GS2. Nor does it align with Policy GS3 of that Plan which states that in such countryside locations new development will only be supported where expressly permitted by other policies of the development plan or national policy. The Council can demonstrate a housing land supply and delivery rate in excess of the national requirements and Policy GC1. Therefore the weight to be attributed to all of these policies is unaffected.

Character and appearance

10. The appeal site comprises a ploughed field located just beyond the built framework of Flaxby. It falls within Area 69 (East Knaresborough Arable Farmland) Landscape Character Area. This area is characterised by the moderate to large scale undulating arable landform. The key aims here are to preserve and enhance the rural pastoral and historic setting of villages and diverse landscape pattern. Moreover, paragraph 174(b) of the National Planning Policy Framework ("the Framework") states that decisions should recognise the intrinsic character and beauty of the countryside.
11. Flaxby has evolved as a small rustic village which is surrounded by this rural landscape. Its linear form is very much focused along York Road at a single plot depth. The absence of services and facilities in the village contributes to the settlement's very intimate, leafy residential character and appearance. Dwellings are varied in height and age, although overall the settlement conveys a simple, mature, traditional village character and appearance, set within a wider countryside context.
12. The appeal site's boundaries with the surrounding fields are well-defined by mature hedgerows and trees which offer some summer screening from the wider surrounding countryside. However, it occupies a roadside position, and that frontage is defined mainly by lower level hedgerow. Although bound by residential dwellings to one side and opposite, the appeal site remains prominent on approach and views into it are uninterrupted upon entering and exiting the village. Its positioning on the settlement edge and agricultural appearance mean that it presents as part of the surrounding countryside and contributes positively to the character and appearance of the street scene.
13. The Council's Residential Design Guide seeks to protect or enhance the environment. Amongst other things, it recognises the importance of the landscape setting of settlements. It also states that the siting of new buildings should reflect the grain of existing settlements and take its inspiration from the subtleties of the composition of the original settlement pattern and not simply emulate suburban 20th century suburban development. However, due to the site's depth and yield, the appeal proposal would unduly disturb the strong linear pattern of buildings which has developed along York Road, representing conflict with this guidance.
14. I concur with the Council that this landscape character is sensitive to change. The appeal site clearly forms part of the wider pastoral setting of this predominantly linear village and contributes positively to those characteristics which positively define this important village form and countryside setting. The appellant has not provided substantive evidence to rebut the Council's concerns about the effect of the appeal proposal on the character and appearance of Flaxby's form and landscape setting.
15. For the reasons given, the appeal proposal would cause considerable harm to the character and appearance of Flaxby and its setting. Policy GS3 of the Local Plan states that proposals for new development outside development limits will only be supported where expressly permitted by other policies of the development plan or national policy. Such an exception has not been demonstrated here. Policy HP3 of the Local Plan states the development should be designed to protect, enhance or reinforce those characteristics, qualities and features that contribute to the local distinctiveness of the rural and urban

environments. Policy NE4 of the Local Plan states that proposals are required to protect, enhance or restore the landscape character of the area and be informed and sympathetic to the distinctive landscape character areas. They must respect the form of settlements and buildings in their landscape setting and protect or enhance visual amenity. Moreover, development which would harm the character of local and wider landscape, or the setting of a settlement will be resisted. In view of the identified harm, the appeal proposal conflicts with all of these policies.

Housing needs

Custom and self-build plots

16. The Council has a duty under the Self Build and Custom Housing Act 2015 (as amended by the Housing and Planning Act) to keep a register of persons who are interested in acquiring a self-build or custom-build ("CSB") plot, and to also grant enough suitable planning permissions for such serviced plots to meet this demand. Paragraph 62 of the Framework is supportive of this type of housing as part of the overall mix. The Council maintains a CSB register, and Policy HS3 of the Local Plan sets out how the Council intends to ensure an adequate supply of this type of housing is maintained as part of the area's overall future housing stock. Through that policy the Council has made provision for CSB units to be delivered across strategic housing allocations as part of their overall type and mix. Also, there is a history of windfalls sites becoming available across the Council area.
17. However, the appellant asserts that the Council has disregarded an Inspector's recent Decision¹ ("the Pannal Decision") regarding the area's supply of CSB plots. That recent Decision highlights that there was a considerable difference in opinion about the extent to which this Council was meeting demand for this type of housing. In that case it was found that the exact position was not clear, but a shortfall in the supply of CSB plots was evident. The appellant has asserted that a serious shortfall continues and that this is following an increasing trajectory. Since the Council made its decision, the position for the period up to the end of the most recent Base Period has become available and it has advised that on 5 April 2022 the 21 eligible entries on the Register were met by the same number of planning permissions. Therefore, the Council maintains that it is meeting its CSB duty.
18. Nonetheless, from that limited evidence, it is not clear how the Council has arrived at this position. The precise balance between demand and supply now alleged by the Council leaves no contingency, in a situation where the reliability of the supply of this specialist housing product is not sufficiently evidenced. Clearly, there have been deficiencies with the register and supply data which it seems the Council has been seeking to address. The National Custom and Self Build Association has recently been critical of the Council's current approach to the Register. Furthermore, the main parties submissions fail to substantiate with clear evidence whether or not the anticipated sources of supply will be reliable during the plan period.
19. The appellant has argued that the retrospective actions of the Council are not supported in the Droitwich Decision². However, the principle of cleansing the

¹ APP/E2734/W/20/3259171

² APP/H1840/W/19/3241879 –

relevant data to make it accurate is not unreasonable here in the interests of ensuring that any previous notable deficiencies do not mar future decision making. Crucially, however, the Council's CBS duty is not curtailed by an absolute ceiling demand figure. Irrespective of what the correct current CBS demand and supply position currently is, and given the executed UU, the appeal proposal could make a significant contribution to meeting local CSB housing needs. The potential contribution and flexibility in CBS supply that this particular scheme could make here is a benefit of significance which carries substantial weight in favour of the appeal proposal.

Affordable housing

20. Policy HS2 of the Local Plan and the 'Affordable Housing Supplementary Planning Document' ("the AHSPD") sets out the affordable housing requirements for housing schemes in the plan area and this extends to the appeal proposal. Due to its nature and low level of accessibility, off-site affordable housing provision or a commuted sum in lieu of such provision is appropriate in this particular instance. Nonetheless, in line with the Council's arguments, I find that the submitted evidence and the executed UU do not demonstrate with sufficient certainty that the affordable housing requirements would be fully delivered in an appropriate and timely manner. The circumstances surrounding this case have not been demonstrated as being so exceptional as to justify the reliance on a planning condition capable of meeting the statutory tests for conditions.
21. Crucially, in this instance a draft section 106 legal agreement to secure this requirement, remains unsigned by the main parties and that has been the appellant's choice. It has therefore not been adequately demonstrated that the appeal proposal would fulfil the policy requirements to meet identified local affordable housing needs. Irrespective of the reasons why an executed section 106 legal agreement is not before me, the draft attracts no weight as a means of securing the necessary affordable housing requirement.

Unit range

22. Policy HS1 of the Local Plan seeks to deliver a range of house types and sizes that reflect and respond to the identified housing needs and demands of the area's households identified in the Housing and Economic Development Needs Assessment ("the HEDNA"). The proposed scheme, because of its specialist nature, is unlikely to fulfil all of the current identified priorities in terms of type, and size. There would however be scope to secure an appropriate mix of affordable dwellings which would assist in diversifying the area's existing housing stock in line with the HEDNA. However, because of the absence of an executed section 106 legal agreement in this regard, the appeal scheme presents a conflict with Policy HS1.
23. In overall conclusion, paragraph 60 of the Framework states that it is important that the needs of groups with specific housing requirements are addressed, and paragraph 62 recognises this includes people wishing to commission or build their own home. The contribution that the appeal proposal would make to meeting the identified wider local housing needs in terms of size, type and affordability have not been adequately demonstrated. This presents conflict with Policies HS1, HS2 and TI4 of the Local Plan. However, the contribution that the appeal proposal would make to the supply of CSB plots would be a substantial benefit weighing in favour of the appeal proposal.

Effectiveness of land use

24. I have already concluded in terms of the range of units which would be secured. Policy HS1 confirms that dwellings should be built at a density of 30 dwellings per hectare. That policy also sets out circumstances where a lower density may be permissible. The appeal proposal would fall significantly short of this requirement, and it has not been demonstrated that the appeal scheme should trigger an exception to this policy.
25. The appeal site is classified as Grade 2 land (Very Good) which is a finite resource. Policy NE8 of the Local Plan states that best and most versatile agricultural land, including Grade 2, will be protected from development not associated with agriculture or forestry except where it can be demonstrated to be necessary. If best and most versatile land needs to be developed and there is a choice between sites in different grades, then land of the lowest grade available must be used except where other sustainability considerations outweigh land quality issues. The submitted evidence does not clearly demonstrate compliance this policy.
26. For these reasons, it has not been adequately demonstrated that the appeal proposal would represent the effective use of land, with particular regard to housing density, mix and supply of best and most versatile land and it conflicts with Policies HS1 and NE8 of the Local Plan.

Ecology and biodiversity interests

27. Policy NE3 requires demonstration that significant harm to ecology and biodiversity interests can be avoided, adequately mitigated or compensated for. Paragraph 174 (d) of the Framework states that decisions should minimise impacts on and provide net gains for biodiversity. Paragraph 180 sets out the principles for proposals that would cause significant harm to these interests and the circumstances where permission should be refused.
28. In terms of biodiversity accounting, the appeal proposal does not fall within the Local Plan's definition of major development contained in the supporting text to Policy NE3. Neither has the national requirement for net gain yet come into force. However, the appellant's Ecology Statement states that the effect on protected species interests requires further survey work and no site specific mitigation measures have been provided. In light of insufficient evidence to the contrary, these matters cannot be adequately dealt with by way of a planning condition and the submission of further details at the reserved matters stage. In exercising my statutory duty in this respect, I cannot rule out that harm would arise. Crucially, the failure of the appellant to meet the provisions of the Wildlife and Countryside Act 1981 weighs considerably against the appeal proposal.
29. In conclusion, it has not been adequately demonstrated that the appeal proposal would not harm local ecological interests, with particular regard to protected species and achieving net biodiversity gain. Therefore, the appeal proposal conflicts with Policy NE3 of the Local Plan.

Local infrastructure

30. The necessity of policy requirements relating to public open space and village hall infrastructure and their levels are not disputed by the main parties. The appellant has argued that the executed UU is a sufficient means to secure

these particular policy requirements. These obligations are relevant, adequate and justified, meeting the tests of the Framework and Regulation 122 of the current Community Infrastructure (CIL) Regulations and make adequate provision for these obligations. Whilst this will suffice, as those particular obligations relate to mitigation to support the development they are of neutral consequence in the planning balance.

31. For these reasons, the submitted executed UU could facilitate adequate capacity to support the appeal proposal, with particular regard to village hall and open space provision. Consequently, the appeal proposal does not conflict with Policies TI4 and HP7 of the Local Plan.

Other Matters

32. The embedding of Passivhaus and other sustainable design credentials into the appeal scheme could be secured at the reserved matters stage through the imposition of an appropriately worded planning condition requiring the submission, approval and implementation of appropriate design codes and plot passports. However, in the absence of precise details no more than moderate weight is attributed to this matter as a benefit. The potential to incorporate a central communal space could be managed through a suitably worded planning condition to ensure it forms part of the reserved matters relating to layout and landscaping. This is a benefit which also attracts moderate weight.
33. The public interest in the scheme asserted by the appellant has not been quantified and the evidence provided does not sufficiently demonstrate that this equates to actual demand for the particular appeal proposal. Consequently this attracts limited weight.
34. The appeal scheme would provide some economic benefit during the construction phase and beyond which, because of its likely scale, attracts limited favourable weight.
35. The Ledbury, Woodville and Gamlingay Decisions³ cited by the appellant convey circumstances whereby CSB plots have been justified outside of development limits, although these do not constitute case law. The Council has not explicitly commented on these. Crucially, however there are a combination of scheme specific matters which must be factored into the planning balance for this particular appeal proposal. This means the outcome can justifiably differ to these according to the weight attributed to them.

Conclusion

36. The appeal scheme promotes an unsustainable pattern of growth. I have found considerable harm to the character and appearance of the area. Furthermore, the appellant has failed to demonstrate that the particular appeal scheme would contribute appropriately to local housing needs or represent the efficient use of land. Neither has it been demonstrated that the appeal proposal would not harm local biodiversity and ecological interests, including protected species. Consequently, the appeal scheme conflicts with the development plan taken as a whole.

³ APP/P1615/W/18/3213122
APP/G2435/W/18/3214451
APP/W0530/W/19/3230103

37. Crucially, there are no material considerations before me that outweigh this conflict, including the contribution that the appeal scheme would make to the supply of CSB plots as part of overall housing provision in the area. I therefore conclude that the appeal should be dismissed.

C Dillon

INSPECTOR