
Appeal Decision

Site visit made on 10 May 2022

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Appeal Ref: APP/E2001/W/21/3288569

Land off Selby Road, Holme on Spalding Moor, East Yorkshire

- 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 Tim Leighton against the decision of East Riding of Yorkshire Council.
 - The application Ref 20/02081/OUT, dated 3 July 2020, was refused by notice dated 9 June 2021.
 - The development proposed is described as 'outline planning permission is sought for the provision of up to 42 no. dwellings'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by East Riding of Yorkshire Council against Mr Tim Leighton. This application is the subject of a separate Decision.

Preliminary Matters

3. The application is in outline with all matters reserved for future consideration. I have considered the appeal on this basis and had regard to the indicative site layout plan and landscape masterplan only in so far as these describe the development.
4. During the appeal process the appellant has submitted a section 106 legal agreement by unilateral undertaking. I come to this below.

Main Issues

5. The main issues are (i) whether the appeal site is an appropriate location for the proposed development having regard to development plan policy; (ii) the effect of the development on the character and appearance of the area; and (iii) if harm arises, whether this is outweighed by other considerations including housing land supply and affordable housing provision.

Reasons

Site

6. The appeal site is approximately 1.5 Ha of land located at the western edge of Holme on Spalding Moor on the north side of Selby Road. The site is adjacent to dwellings that face Station Lane to the east, dwellings and open land to the

north and undeveloped fields to the west. Selby Road is to the south, beyond the road is undeveloped land.

7. Holme on Spalding Moor is a large village. It comprises dwellings directly fronting the village streets as well as 'in depth' residential cul-de-sacs that extend back from street frontages. Services and facilities include convenience stores, public houses, post office, bakery, village hall, pharmacy, GP surgery and primary school.
8. The proposal is to construct 42 dwellings, including affordable housing. Although a reserved matter, for illustrative purposes access to the appeal site is shown as being from the eastern side of the Selby Road frontage.

Location

9. The development plan includes the East Riding Local Plan Strategy Document (LPSD) (April 2016) and the East Riding Local Plan Allocation Document (LPAD) (July 2016).
10. The appeal site is outside the development limits as set out in the LPSD and is not identified as a housing allocation in the LPAD. The approach in Policy S3 of the LPSD is to focus development within the defined settlement network, including Rural Service Centres (RSC) such as Holme on Spalding Moor. Policy S3 supports residential development in RSCs commensurate with the scale, role, and character of the village.
11. Policy S5 of the LPSD confirms that in RSCs, sites for housing will be allocated to support an identified level of growth. For Holme on Spalding Moor this is set at 225 houses over the plan period between 2012/13 and 2028/29.
12. In this context, Policy S4 sets out how development in villages and the countryside will be considered, principally having regard to whether it is within the defined development limits of a village or outside.
13. The appeal site is outside the development limits of Holme on Spalding Moor. Consequently, for the purposes of planning policy it is within the countryside. Policy S4 recognises certain forms of development that would be supported in the countryside. None of these types of development are argued in this case and the appellant accepts that the proposal is contrary to Policy S4.
14. I understand that the Council is progressing a review of the East Riding Local Plan. However, the review is at an early stage and no party has suggested that it can be accorded other than limited weight at this time.
15. Overall, the proposal does not conform to the relevant locational policies of the development plan, as the site is outside the development limits and is in the open countryside in policy terms. Therefore, the appeal site would not be an appropriate location for the proposed development having regard to development plan policy. As such, it would conflict with Policies S3, S4 and S5 of the LPSD where these are concerned with how development is to be managed outside of development limits and in the countryside.
16. These policies are consistent with the National Planning Policy Framework (the Framework) where it seeks to ensure that planning policies identify opportunities for villages to grow and thrive, as well as recognising the intrinsic character of the countryside.

Character and appearance

17. Policy S4 envisages that in the countryside development proposals will respect the intrinsic character of their surroundings. In addition, the expectation of Policies ENV1 and ENV2 of the LPSD is that development will be well designed and appropriate to its context.
18. The appeal site is located within National Character Area 'Humberside Levels'. At a local level, within the Council's character assessment, the appeal site is part of character area 6B 'Wooded open farmland'. The area contains low-lying flat farmland in good condition with scattered villages and farmsteads. Field sizes are generally medium to large and land use is a mix of arable and grassland. Hedges are varied in condition. Plantation woodland and individual trees are present along field boundaries.
19. The appeal site forms part of a pattern of undeveloped fields that border Selby Road. Field boundaries are partially defined by hedges and boundary trees. There are views across the fields towards the rear of properties facing Station Lane where boundaries are continuous, mostly hedging with some fencing and mature trees, that provide a distinct edge to the settlement. The undeveloped fields including the appeal site, taken together with the grass verges, hedges and trees along the Selby Road frontage on the entrance to the village, provide an attractive landscape with an open, rural character and appearance, which contribute to the rural setting of Holme on Spalding Moor.
20. The form of development illustrated on the appeal plans would be suburban estate development. An arrangement of houses served via a single access road, extending back into the appeal site for a considerable depth, would be prominent because of the open countryside that would surround it and the absence of significant other residential development in the immediate field of vision on the entrance to the village. When viewed from Selby Road the likely scale and form of the development would be significantly more apparent than the limited linear development along the Station Lane frontage. The development would dominate the village entrance, detract from the rural edge of the settlement and the rural character of the route into and out of Holme on Spalding Moor.
21. I accept that the appeal site is not a valued landscape in the terms set out in the Framework, but the appeal site is an attractive area of countryside that is not untypical of its national and local landscape character area. The open character of the site, and the limited other development surrounding it, results in relatively high levels of visibility from Selby Road, from the rear of properties facing the site and from Station Lane, where gaps between buildings provide views through to open countryside. Landscape mitigation may over time reduce some of the visual effects of the development. Nevertheless, landscaping would not mitigate the effects of extending the village into its rural surroundings with an uncharacteristic form of development.
22. Whilst the food factory is a relatively prominent element of the landscape, its industrial character has a different visual effect. Set back considerably from the Selby Road frontage, its size and location does not influence the form of the residential development at the edge of the village or the rural qualities of the entrance to the settlement.

23. Overall, the proposed development would have a marked and harmful effect on the setting and character of the village. I conclude that the appellant's assessment of the proposal has underestimated the landscape and visual effects of the development on the character of the village, and that the appeal scheme would result in significant harm to both.
24. For these reasons, the development would harm the character and appearance of the area in conflict with Policies ENV1 and ENV2 of the ERDP. It would also conflict with the Framework, where it seeks to ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, and that decisions should contribute to and enhance the natural and local environment by among other things recognising the intrinsic character and beauty of the countryside. I attach significant weight to this harm.

Housing land supply

25. The appellant does not dispute that the Council can demonstrate a 5-year Housing land supply (5YHLS)¹ but considers that there is a significant shortfall against the adopted housing requirement set out in Policy S5 of the LPSD. However, notwithstanding the agreed 5YHLS, the Council states that Holme on Spalding Moor is expected to provide at least the level of housing required in Policy S5; this is not disputed by the appellant. Therefore, in terms of the spatial strategy in the LPSD the village is meeting its housing requirements.
26. I accept that the Framework sets out the Government's objective of significantly boosting the supply of homes and that a 5YHLS is not a ceiling for development. I also acknowledge that the proposal would contribute towards such an objective through an addition of up to 42 dwellings. However, having regard to the agreed supply position overall, I attached moderate weight to the provision of new housing at the appeal site.

Affordable housing

27. The proposal is to provide a policy compliant provision (25%) of affordable housing. The appellant highlights that there has been a sustained shortfall in affordable housing against the LPSD target in Policy S5 in each year of the plan period and the assessment of the 5YHLS against local housing need using the standard method will further compound the shortage of affordable housing.
28. The Council agrees affordable housing should be given significant weight. Nevertheless, it considers that the affordable housing provision in Holme on Spalding Moor is particularly strong and inconsistent with the district wide position.
29. Although the supply of affordable housing in Holme on Spalding Moor may not be commensurate with the overall picture within the East Riding, the evidence before me is that over a sustained period East Riding has had a shortfall in affordable housing described as both 'significant and pressing' and 'acute'. Therefore, in accordance with the conclusions in the Pocklington and Swanland appeals², where locally a healthy supply of affordable housing had been identified and the proposed level of affordable housing was not more than

¹ Paragraph 2.10 of the Appellant's final comments dated 19 April 2022

² Appendix EP6 and EP7 of the appellant's statement of case

policy compliant, the weight to be given to affordable housing as a benefit must be substantial.

Other considerations

30. The facilities within Holme on Spalding Moor are accessible on foot or by bicycle from the appeal site, and the bus service would mean that not all trips to access services and facilities beyond the village would be by car. The fact that the site is agreed to be in a sustainable location in relation to the provision of services and facilities is welcomed, but as it could be repeated at other sites within or adjacent to the settlement or in higher tiers of the settlement network where there is likely to be access to a wider range of facilities on foot or by bicycle, I attach very limited benefit to the appeal site's location.
31. The scheme would result in a degree of economic gain to the area through the construction and occupation of the development. Those jobs associated with construction would be temporary and limited. However, household expenditure would help support the local shops and facilities in Holme on Spalding Moor particularly given their accessibility. I have noted the specific calculations in relation to economic benefits, but I have no way of assessing how realistic these figures are, nor can I conclude that such benefits are unique to the appeal site. Nevertheless, I attach limited positive weight to the social and economic benefits of the scheme in this respect.
32. The school has capacity to accommodate additional pupils. Although the evidence suggests a current under capacity at the school, there is little before me to indicate that the effects of the 225 houses allocated within Holme on Spalding Moor on school capacity has been taken into account. Further, in the absence of the proposed development, there is limited substantive evidence that the school would not be able to fulfil its function. This matter is neutral in the planning balance.
33. Whilst there would be Council Tax revenue from the development, there would also be new occupiers to serve. As such, this revenue would simply offset the effects of the proposal and the demands of those future occupiers on local services and is a neutral factor in the planning balance.
34. I have not been provided with evidence of any short fall in open space provision, but open space within the development could benefit local villages. I attach limited positive weight to the social benefits of providing open space accessible to the village residents.
35. The parties agree that, in respect of housing mix, highways, flood risk, agricultural land and ecology and biodiversity the proposed development could accord with the policies in the LPSD. Although some of these issues are disputed by interested parties, there is nothing in the evidence before me that leads me to take a different view on these matters. Nonetheless, a lack of harm in these respects weighs neutrally and does not amount to support in favour of the appeal.
36. I have considered the various appeal decisions referred to. In the Pocklington and Swanland appeals the Inspector found conflict with the spatial strategy. However, at that time the Council could not demonstrate a 5YHLS and paragraph 11d of the Framework was engaged. Further, these appeal decisions do not reflect my findings here in terms of character and appearance.

37. In addition, I have considered the appeal decisions³ which illustrate that even if a Council has a 5YHLS other material considerations, including the Framework's requirement to significantly boost the supply of houses, can be sufficient to outweigh conflict with the development plan in the overall planning balance. Even so, each site has its own site-specific material considerations to be weighed in the planning balance, and these other appeal decisions are of limited relevance in this respect.
38. I also recognise that there are limitations to a comparison of the appeal proposal with the appeal decision at Back Lane⁴ Holme on Spalding Moor, which related to a larger development with a consequent greater effect on the overall spatial strategy and was determined some time ago shortly after the adoption of the LPSD. I accept that this limits its relevance to the appeal proposal which I have considered on its own merits.

Unilateral undertaking

39. The appellant has provided a unilateral undertaking. The undertaking is intended to provide a mechanism to secure the provision of affordable housing, on site open space and an offsite financial contribution to deliver improvements to mitigate the pressures on recreation facilities. The agreement has not been dated and is therefore incomplete.
40. The Council considers that affordable housing, open space provision and the recreation facilities contribution can be sought by appropriately worded conditions. The Planning Practice Guidance (PPG) advises that a negatively worded condition which requires an applicant to enter into a planning obligation is unlikely to be appropriate in the majority of cases; entering into an obligation prior to the grant of permission is the best way to ensure certainty and transparency. However, the PPG continues that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk.
41. The Council has not set out any exceptional circumstances for the use of conditions in this case. Nor, in accordance with the PPG, have the heads of terms been agreed to ensure that the test of necessity is met and in the interests of transparency.
42. Therefore, in the absence of a mechanism to deliver the proposed affordable housing, open space, or recreation facilities, these would not be secured if planning permission were to be granted.

Planning Balance and Conclusion

43. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework makes clear that the planning system should be genuinely plan-led.
44. I conclude that the proposal would not be an appropriate location for the proposed development having regard to development plan policy and would

³ Appendix EP4 and EP5 of the appellant's statement of case

⁴ APP/E2001/W/16/3165880

significantly harm the character and appearance of the area. In these respects, there would be conflict with Policies S3, S4, S5, ENV1 and ENV2 of the LPSD and I attach significant weight to this conflict.

45. Set against this harm would be the increase in supply of housing to which I attach moderate weight. The proposal would also support the provision of affordable housing, to which I give substantial weight, and bring some social and economic benefits that I accord limited weight. However, I have no mechanism before me to provide the affordable housing, the open space or recreation facilities and this diminishes the benefits of the development.
46. Taken together the benefits associated with the development would not outweigh the significant weight I attach to the conflict with the development plan. Having regard to my assessment of the matters that weigh in favour of the proposal, even if I had been presented with a completed unilateral undertaking or other legal agreement which would secure the affordable housing, open space or recreation facilities, the conflict with the development plan would not be outweighed.
47. For the reasons given above, I conclude that the proposal conflicts with the development plan when taken as a whole, and there are no material considerations including the Framework, to outweigh this conflict. Therefore, the appeal is dismissed.

Diane Cragg

INSPECTOR