



Appeal Decision

Inquiry held on 5, 6 and 7 December 2023

Site visit made on 7 December 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2024

Appeal Ref: APP/U2750/W/23/3327421

Land off School Road, Hemingbrough, Selby, North Yorkshire YO8 6AE

- 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 B FALKINGHAM & W A HARE & SON LIMITED against the decision of North Yorkshire Council.
 - The application Ref 2019/0458/OUTM, dated 3 May 2019, was refused by notice dated 9 February 2023.
 - The development proposed is Residential Development (up to 40 Dwellings).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 December 2023 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework was accompanied by a written ministerial statement. The parties were invited to make submissions in light of the revisions that have been made to the Framework and I have taken the responses into account.
3. Planning permission for the proposal was refused by Selby District Council, which at the time was the Local Planning Authority (LPA) for the area. On 1 April 2023 North Yorkshire Council was created and is now the LPA for the area previously covered by Selby District Council. In my Decision I do not differentiate between the two Councils, given their respective functions as the LPA.
4. The application to which this appeal relates was made in outline with details of access only and all other matters being reserved. Various plans showing how the site could be developed have been submitted in support of the appeal and I have treated these as being illustrative only.
5. The appellant has revised the proposal, removing the commitment to deliver the proposed housing as self/custom built housing and no suitable mechanism to secure the housing as such is before me. As a result, the description of development detailed on the application and appeal forms is inaccurate. In the interests of clarity I have changed the description in the banner heading above to remove reference to self/custom built and I am satisfied that this change correctly describes the appeal scheme and that no party is disadvantaged by this change.

6. Prior to the opening of the Inquiry additional evidence was submitted in respect of drainage and trees such that, as set out in the Statement of Common Ground (SoCG) and addendum SoCG, these matters are considered by the parties to be resolved and those reasons for refusal are therefore withdrawn by the Council.
7. The appellant has provided a planning obligation for the provision of waste and recycling facilities and access route in accordance with the provisions under section 106 of the Town and Country Planning Act 1990. This obligation does not secure the provision of affordable housing.

Main Issues

8. Accordingly, the main issues are:
 - i. Whether or not the proposal secures adequate provision of affordable housing;
 - ii. Whether or not the appeal site is a suitable location for the proposed development with regards to the Council's Spatial Development Strategy for the District;
 - iii. The effect of the proposal on the character and appearance of the area;
 - iv. Whether there are any other material considerations which would justify the development being determined other than in accordance with the development plan.

Reasons

Affordable housing

9. Policy SP9 of the Selby District Core Strategy Local Plan (2013) (CS) seeks to achieve the provision of Affordable Housing at a rate of 40% of all the dwellings developed on the site, subject to "negotiation at the time of a planning application, having regard to any abnormal costs, economic viability and other requirements associated with the development". The eLP, informed by an updated Viability Assessment, seeks a reduced rate of affordable housing provision of 20%.
10. At the Inquiry the Council sought, and the parties agreed, that the appeal scheme would provide 20% of the dwellings built on site as affordable homes. Of the proposed 40 dwellings this would amount to 8 dwellings.
11. I am satisfied that the provision of 20% affordable housing can be considered to be appropriate in this instance and, if appropriately secured, would be in accordance with Policy SP9 of the CS. There are no other substantive reasons before me that would lead me to conclude otherwise.
12. However, the appellant has proposed that the affordable housing be secured using a suitably worded condition, whereas the Council is seeking a planning obligation. This matter was discussed in detail at the Inquiry.
13. The condition proposed by the appellant is negatively worded and requires the submission of a "scheme" to control various aspects of the affordable housing to be provided on site. This approach is supported by the caselaw provided by the appellant, such that I am satisfied that the condition proposed by the

appellant is lawful, but the tests and guidance set out in the Framework and the National Planning Practice Guidance (NPPG) respectively must still be applied.

14. The NPPG details a general preference for the use of conditions over planning obligations but, with specific regards to negatively worded conditions, states that such a condition is “unlikely to be appropriate in the majority of cases”. Reference is made in the NPPG to exceptional circumstances and where there is clear “evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of a particular complex development scheme)”.
15. I have no substantive evidence before me to suggest that any exceptional circumstances exist in this instance, nor is it suggested that the appeal scheme is particularly complex. As such the use of a condition to secure affordable housing is clearly contrary to the guidance set out in the NPPG in this instance.
16. Turning to the tests set out in paragraph 56 of the Framework. The Council maintains that the condition requires a legal agreement be entered into and fails the test of enforceability.
17. While there is clear agreement between the parties regards the principle that the appeal scheme is to provide 20% affordable housing, the use of a condition in lieu of a planning obligation is contrary to guidance set out in the NPPG and I am not persuaded that there are any exceptional circumstances in this instance. Therefore, I consider that the test of necessity is not met.
18. Turning to the matter of enforceability, the condition proposed by the appellant is reasonably read as requiring a planning obligation. In common with other such planning obligations securing the provision of affordable housing, it would likely refer to a number of matters including a third party such as the transfer of the affordable housing to a housing association or similar body, as referred to by the Council.
19. I have no substantive evidence before me detailing the principal terms of any such agreement or wider scheme to deliver affordable housing. As such, it has not been demonstrated that the proposed condition is enforceable and therefore fails the test of enforceability.
20. I therefore find that the provision of affordable housing, even at the reduced rate of 20%, is not adequately secured by condition and no other mechanism that would appropriately secure the provision of affordable housing is before me. Thus, I conclude that the proposal does not secure adequate provision of affordable housing and as such is contrary to Policy SP9 of the CS.
21. The Council’s Spatial Development Strategy
22. The development plan comprises the CS and the remaining saved policies of the Selby District Local Plan (2005) (LP). In accordance with the Framework, a review should have been completed by 2018 but this has not happened.
23. The emerging Local Plan (eLP) allocated the appeal site and a wider area of land for housing and was to be submitted for Examination but, following the amalgamation of the district and borough Councils into North Yorkshire Council,

progress on the local plan has been minimal. The Council detail¹ that it is now the intention, subject to the approval of the full council, to progress the eLP with submission for examination expected sometime in 2024. It was not suggested to me that there was a likelihood of the site allocation being removed from the eLP. The site is allocated in the eLP and this is a material consideration that weighs in favour of the appeal scheme. However, I afford it very limited weight because the eLP it is still at an early stage of preparation.

24. The Council has not progressed an argument of prematurity but has identified that the comprehensive development of the larger site could yield greater opportunities for landscaping, with corresponding benefits from the creation of ecological enhancement and provision of recreational open space. This is a matter I will return to later.
25. Returning to the development plan, Policy SP2 of the CS sets out the spatial development strategy including a number of principles on which future development will be based. It makes it clear that the majority of new development will be directed to the towns and more sustainable villages depending on their future role as employment, retail and service centres, the level of local housing need, and particular environmental, flood risk and infrastructure constraints. Hemingbrough is identified as one of a number of Designated Service Centres, that the policy identifies as having "some scope for additional residential and small-scale employment growth". As such, in this regard Hemingbrough is a suitable settlement for housing development.
26. It is common ground that that the appeal site is outside of, but adjacent to, the existing Development Limits of Hemingbrough as set out in the LP. The countryside is defined as areas outside of Development Limits.
27. Part A(c) of Policy SP2 limits development in the countryside to the replacement or extension of existing buildings, the re-use of buildings and well-designed new buildings of an appropriate scale, which would contribute towards and improve the local economy and where it will enhance or maintain the vitality of rural communities, in accordance with Policy SP13 of the Core Strategy, or meet rural affordable housing need or other special circumstances. The appeal scheme does not meet any of these exceptions.
28. However, the Development Limits of the LP are drawn tightly to the built form of the village, excluding the school playing field, the appeal site and, with the exception of the residential dwellings immediately to the north of the appeal site, the other built development along School Road to the west of the appeal site. When viewed on the ground it is clear that the Development Limits do not represent the edge of the built development of Hemingbrough. Therefore, taken in combination, the allocation of the appeal site in the eLP and existing new development, demonstrate that the defined Development Limits will change through the new local plan to accommodate new housing development.
29. Thus, whilst the site is outside of but adjacent to the Development Limits of Hemingbrough and thus in the open countryside under Policy SP2, the Development Limit as set out in the LP does not reflect the situation on the ground and should have been reviewed some time ago. As such, I attach very little weight to the appeal scheme's conflict with this part of Policy SP2.

¹ Paragraph 2.7 of Caroline Skelly Proof of Evidence

30. I do not accept however that the situation outlined above renders the development plan out of date in its entirety or that the development strategy enacted by Policy SP2 is out of date.
31. To conclude this main issue, while there is a limited conflict with Policy SP2 in relation to the Development Limit, I attach very limited weight to this conflict, and I am satisfied that the appeal scheme would not undermine the overall Spatial Development Strategy outlined in Policy SP2 and the development plan as a whole.

Character and appearance

32. The appeal site is located on the edge of the village and sits within the context of existing built development to the west, north and east.
33. The appeal site is not within or immediately adjacent to any Landscape designation in the adopted development plan. The Selby Landscape Character Assessment² identifies the appeal site as lying within Character Area 10: East Selby Farmland, where a "lack of large-scale human elements promotes a strong rural character, with associated tranquillity, particularly along minor roads and in smaller villages".
34. I saw at the site visit that, in proximity to the appeal site, the southern boundary of the existing settlement is largely formed of domestic fencing with some limited hedges and therefore often appears as an abrupt boundary to the agricultural fields to the south that also includes the River Ouse and the imposing Drax Power Station. Therefore, I consider that the area and site have a semi-rural character.
35. The gateway into the village from the east is at the junction of Hull Road (A63) and School Road. Travelling along School Road to the appeal site, the character and appearance of the village is already established. I acknowledge the presence of an agricultural field adjacent to School Road near to the junction and the glimpses of the appeal site behind the residential properties that front on to School Road. Nonetheless, I do not find that the development of the appeal site, with appropriate landscape planting on Chapel Balk Road, would have a harmful urbanising effect on this entrance to Hemingbrough or that it would appear uncharacteristic in this location, in particular in the context of recent housing further east along School Road.
36. The Council identifies³ the site as "likely to be highly sensitive" to change, identifying sensitive receptors benefiting from open views from a number of viewpoints including Chapel Balk Road, Grange Road, Barmby Ferry Road and the Hemingbrough settlement fringes to the west, north, and east of the site. The site is an open field but, as detailed previously, it is set within the context of existing built development, predominantly to the west but also to the east and to the north. It is within this context that shorter distance views by users of adjacent roads, tracks and public rights of way see the site and consequently would see the appeal scheme.
37. Longer distance views of the appeal site are predominantly from the south as a result of intervening development and vegetation elsewhere. As such, the appeal site would be viewed within the context of Hemingbrough and within an

² Paragraph 5.2, John Wainwright Proof of Evidence

³ Paragraph 6.8, John Wainwright Proof of Evidence

- open but semi-rural landscape where, in the wider context, development is readily apparent, including the Drax power station.
38. I saw at the site visit that the built development to the east is screened by mature hedges and trees. In accordance with the character of the area it would be necessary, as referred to by both parties, that the appeal scheme incorporates landscaping.
39. Such landscaping should be in the form of boundary hedgerows and trees sufficient to reflect the transition from the often-abrupt southern boundary of the existing settlement to the west and the screened built development to the east and to soften views of the appeal site from the south.
40. The application was submitted in outline form with details of access only and all other matters, including landscaping, reserved. The appellant's evidence refers to mitigation planting along Chapel Balk Road and to the southern boundary of the proposed development and details⁴ that once the planting is established "the nature of the effects would be considered neutral or possibly beneficial given the introduction of new mitigation planting." Based on the evidence before me, I am satisfied that appropriate landscaping could be incorporated as part of the appeal scheme.
41. Therefore, for these reasons and on the basis of the evidence before me I do not consider that there would be significant harm to long or short distance views as a result of the appeal scheme.
42. As part of the outline submission the appellant has submitted various plans, relating to site access, layout, drainage and landscaping to show how the site could be developed. These plans demonstrate how the development could be laid out to respond to the constraints and opportunities of the site. Some of the plans appear to conflict, with overlaps between drainage works, dwellings and landscaping. However, overall, the plans are a useful broad guide to assess the landscape and visual impact effects of the proposal. In doing so I accept that there is potential, indeed the likelihood, for an alternative site layout and arrangement to come forwards.
43. Nevertheless, I am satisfied that these plans clearly demonstrate that an appropriate scheme could be progressed for the site for up to 40 dwellings while still providing appropriate landscaping and other requirements such as drainage.
44. I accept that the proposal would result in the development of what is currently an agricultural field and would extend the built development into the countryside. However, the appeal site is set within the context of the existing built development of Hemingbrough. Therefore, whilst views from the South towards the appeal site would change, they would be substantially mitigated by appropriate planting. I therefore conclude that the proposal would not harm the character and appearance of the area.
45. For the reasons detailed above I find that the appeal scheme would not harm the character and appearance of the area and is not therefore in conflict with saved Policy ENV1 of the LP and Policy SP19 of the CS that amongst other matters seek to protect the character and appearance of the area.

⁴ Paragraph 4.1.5, Landscape and Visual Proof of Evidence

Other material considerations

Housing land supply

46. Whether or not the Council are able to demonstrate 5 years of deliverable land for housing supply was at dispute between the parties and to this end the parties agreed a SoCG clarifying the dispute between the parties.
47. However, since the Inquiry closed the revised Framework was published and as set out in paragraph 226, because of the progress of the eLP, the council are now required to provide a minimum of four years' supply against the housing requirement.
48. The appellant notes the significant delays to the eLP but refers to the four-year supply of deliverable land for housing supply rather than five as a "reasonable approach in the circumstances"⁵. Applying this approach to this appeal, I am satisfied that the Council can provide the minimum four-year supply of housing land as required by the Framework.
49. Nonetheless, the appeal scheme would contribute some 40 dwellings towards the housing needs of the area. Consequently, this would be a significant benefit derived from the proposal and I afford it great weight.

Planning Obligation

50. The appellant has submitted a Unilateral Undertaking pursuant to Section 106 of the Act, providing planning obligations in relation to access through the site and provision of a waste and recycling contribution. The Council has been given the opportunity to comment on the Unilateral Undertaking and confirmed at the Inquiry that it believes there are technical difficulties concerning the Undertaking in relation to the access to the adjacent potential future development site. I have considered the obligation against the relevant tests in Regulation 122 of the CIL Regulations 2010 and the Framework.
51. The obligation relating to Recycling and Waste Contribution refers to the sum of £65 per dwelling to be paid to the Council towards the provision of wheeled waste containers. The financial contribution in respect of waste and recycling facilities is supported by saved policies ENV1 and CS6 of the LP and policy SP19 of the CS.
52. The second obligation refers to access through the site from the northern boundary to the southern boundary. This would be to dedicate it as an access route through the site for a variety of users, though the private motor car is intentionally absent. I am satisfied that securing an access route and access scheme through the development is reasonable and that the obligation before me adequately secures such provision.
53. I am satisfied that the planning obligations in relation to these matters meet the tests in the Framework and the CIL Regs and I have taken account of them in reaching my decision.

Open Space

⁵ Paragraph 3.2 Letter dated 26 January 2024 'Re: 3327421: Land off School Road, Hemingbrough, Selby', David Hardy, CMS Cameron McKenna Nabarro Olswang LLP

54. The Council identify that Hemingbrough has an under provision of open space. Saved Policy RT2 of the LP refers to open space requirements for new residential development, as does the allocation (HEMB-G) in the eLP. With regards the appeal scheme Policy RT2 seeks, "subject to negotiation and the existing level of provision in the locality" the provision of open space within the site, within the locality, provision elsewhere or a financial contribution.
55. The appellant has made a clear commitment in their submitted evidence to meet the requirements of the development plan. As detailed previously, no one submitted plan shows the development of the site while incorporating all of the matters at dispute between the parties, but I acknowledge that the application is made in outline with details of access only. Matters relating to appearance, landscaping, layout and scale, details that would crystallise the open space provision, are reserved for future consideration.
56. On this basis of the submitted plans before me and the flexibility inherent in saved Policy RT2 I am satisfied that an appropriate scheme could be progressed for the site for up to 40 dwellings that would make appropriate provision for open space in accordance with the development plan.

Conclusion

57. I have found that, in accordance with the development plan, Hemingbrough is a suitable location for housing development and while there is some conflict with Policy SP2 in respect of the development limits, I have afforded this conflict limited weight.
58. Furthermore, I have found that the appeal scheme would not harm the character and appearance of the area. In addition to this the appeal scheme would deliver up to 40 dwellings and this is a material consideration that affords great weight in favour of the appeal scheme.
59. I have however found that there is not a suitable mechanism before me to secure the appropriate provision of affordable housing, contrary to the provisions of the development plan.
60. I do not find that the delivery of housing, albeit on a site in a suitable location, and the absence of harm to the character and appearance of the area outweigh the conflict with the development plan resulting from the failure of the appeal scheme to secure the appropriate provision of affordable housing.
61. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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INTERESTED PARTIES:

Councillor Jan Strelczenie

Julie Eshelby

Hemingbrough Parish Council

Hemingbrough Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

1. Opening Submissions, submitted by the appellant.
2. Opening Submissions, submitted by the Council
3. The Council's Closing Submissions.
4. The Appellant's Closing Submissions
5. Extract from the Planning Inspectorates' Inspector Training Manual, provided by the Council.
6. a copy of R (Zins) v East Suffolk Council and another [2020] EWHC 2969 (Admin), provided by the appellant.
7. R (oao Skelmersdale Ltd Partnership) v West Lancashire Borough Council St Modwen Developments (Skelmersdale) Ltd (Interested Party) [2016] EWHC 109 (Admin), provided by the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY (ID)

8. Planning obligation
9. Agreed suggested list of conditions