



Appeal Decision

Hearing held on 17 October 2024

Site visit made on 16 and 17 October 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/U2750/W/24/3344035

**Land at Woodland View, Flaxby, Knaresborough, North Yorkshire
HG5 0RR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Holmes Planning Ltd against the decision of North Yorkshire Council.
 - The application Ref is ZC23/03071/OUT.
 - The development proposed is Outline application for up to 4 eco-custom self-build homes with all matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is made in outline form with all matters reserved for later consideration. An indicative layout plan has been submitted to show how four dwellings might be arranged on site. This shows the houses arranged in a linear row. Due to its indicative status and the nature of the proposal, I shall consider this as a supporting document of limited weight.
3. Two s106 Legal Agreements, submitted in the form of Unilateral Undertakings (UU), have been made in support of the appeal. The first (UU-A) relates to the provision of Self and Custom Build (SCB) housing and the second (UU-B) relates to the provision of public open space on site. I shall return to these matters later.

Main Issues

4. The main issues are:
 - Whether the site would be a suitable location for housing in consideration of local and national policies,
 - The effect of flooding on the proposed development,
 - The effect of the proposal on the character and appearance of the area,

- The effect on the living conditions of future occupiers with respect to noise impacts,
- The effect of the proposed development on protected species, and
- The effect of the proposal on agricultural land.

Reasons

Suitability of location

5. The Harrogate District Local Plan [2020] (LP) establishes the Council's approach to the distribution of housing across the district. The LP seeks, at policy GS2, to focus housing within its main settlements of Harrogate, Knaresborough and Ripon. Lower tier settlements, listed as Local Service Centres, Service Villages and Smaller Villages, are allocated proportionate new housing with the latter deemed only suitable for small scale infill development. This policy lists the names of each settlement and which tier it falls within. The small village of Flaxby is not listed by LP policy GS2 and as such, by virtue of this policy, is deemed to be part of the countryside.
6. LP policy GS3 explains that new development within development limits will be supported provided it would comply with other relevant policies of the plan. Outside development limits, it states that development will only be allowed where expressly permitted by other policies of the plan or a neighbourhood plan or national planning policy.
7. Flaxby is a small village that has no shops or facilities. It is served by an infrequent bus service that would be unsuitable to meet the needs of commuters. A school bus service also operates through the village, providing a benefit, albeit limited for future occupiers with children. A railway halt, or station, is proposed at Flaxby Green Park with a pedestrian route to this via a bridleway. However, the bridleway is an unsurfaced and unlit route. Furthermore, this route crosses the A59 which, whilst only providing a snapshot in time, I found to be extremely busy during my visits. As such, pedestrian access to the rail halt would be via a substandard walking route that would be likely to deter users. Also, although it is noted that Green Park will create 3,000 jobs there is no clear reason why future occupiers would necessarily benefit from this employment opportunity.
8. In any event, any locational benefits derived from the proximity of Flaxby Green Park would be limited, and do not materially alter the context of the site adjacent to a small village. For these reasons, the site would offer future occupiers with limited access to sustainable modes of travel, who would be reliant on a private car to access goods and services.
9. Consequently, the site would not be a suitable location for housing in consideration of the Council's spatial housing policies. Accordingly, the proposal would conflict with LP policies GS2 and GS3 with respect to matters of location. These policies seek, among other matters, to only allow development of sites not within the settlement hierarchy, in the wider countryside, if permitted by other policies of the development plan and where expressly permitted.

Flooding

10. LP policy CC1 informs that a proposal will not be permitted where it would have an adverse effect on watercourses or would increase flooding elsewhere. The policy also states that development will only be permitted where it has an acceptably low risk of being affected by flooding. The site is within flood zone 1, with a low risk from fluvial flooding. However, the Appellant's Flood Risk Assessment¹ identifies that the north part of the site is subject to a medium and high risk of surface water flooding.
11. Paragraph 165, of the National Planning Policy Framework (the Framework), states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Moreover, where it is necessary, development should be made safe for its lifetime without increasing risk elsewhere. Being for a residential development the proposal would be 'more vulnerable' to flooding. The National Planning Practice Guidance (PPG) states that areas that are at little or no risk of flooding are developed in preference to areas of higher risk. It explains that this means avoiding development in medium and high flood risk areas, considering all sources of flooding including areas at risk of surface water flooding. It comments that avoiding flood risk through the sequential test is the most effective way of addressing flood risk. The Framework identifies that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.
12. The PPG explains that the area to apply the test will be defined by local circumstances. Accordingly, the study area for a sequential test is not defined in guidance and depends on the site's context, but the PPG explains that alternative sites should be reasonably available. At the hearing the Council explained that it has provided guidance to the Appellant as to the type and location of sites that should be included within a sequential test. In the absence of a sequential test, the proposal has failed to demonstrate that alternative sites are reasonably available that are in areas that are less likely to suffer flooding.
13. The Exception Test, that considers mitigation and resilience to demonstrate that the site would be safe for the lifetime of the development, does not need to be applied as the sequential test has not demonstrated that there are no other reasonably available sites suitable, on lower risk sites. Furthermore, the proposed access into the site would pass through the area identified as vulnerable to surface level flooding and the levels are proposed to be set at 150mm above ground level, where the standing advice from the Environment Agency is for levels to be set at 300mm in areas of flooding. Consequently, irrespective of the absence of a sequential test, it has not been demonstrated that the proposed development would be safe from flooding, throughout its lifetime, without causing flooding elsewhere.
14. Accordingly, the proposal would not comply with local or national policies with respect to matters of flooding. Consequently, the proposal would conflict with LP policy CC1 and the Framework whose objectives are already set out above.

¹ Flood Risk Assessment, JNP Group Consulting Engineers, September 2023

Character and appearance

15. The appeal site is part of a cultivated field adjacent to the small village of Flaxby. The site is enclosed by hedging to its front and sides, it has no defined rear boundary. The field connects to other fields to its rear and side and complements the open countryside that the village sits within.
16. The Harrogate Landscape Character Assessment identifies that the site is within character area 69: East Knaresborough Arable. This area is described as having an undulating and sloping landform with moderate tree cover and generally tall boundaries of bushy hedges. The site shares these key characteristics and thus makes a positive contribution to the area's landscape character and its appearance within the countryside.
17. The proposed development is in outline form. There is no indication of the scale of development, and the indicative plan is only roughly drawn, providing only a basic suggestion as to how houses might be arranged. Nonetheless, it is evident that residential development would significantly alter the appearance of the site. The site makes an important contribution to the surrounding countryside and offers open views over it from the highway. The site provides a strong contribution to the area as a defined edge of the settlement.
18. The appearance of buildings on site would fundamentally change its existing character. The introduction of built form and associated domestic paraphernalia would enclose views and erode this rural, pastoral landscape and the open aspect of the site. I am cognisant that the proposed dwellings could be arranged in a linear fashion that would accord with the established pattern of development through the village. Also, the frontage hedging would obscure some parts of the proposal. However, these features would not mitigate the adverse visual impact of the scheme.
19. Accordingly, the proposal would result in harm to the site's landscape character and appearance and its surroundings. Consequently, the proposal would conflict with LP policies HP3 and NE4, the Harrogate Landscape Character Assessment and the Framework. These seek, among other matters, for development to protect those characteristics, qualities and features that contribute to local distinctiveness, to protect landscape character and be sympathetic to local character. Furthermore, LP policy CC3 regarding renewable energy, supports renewable energy generation into new developments if it would not result in adverse visual effects. As the proposed dwellings would result in adverse landscape and visual harm the proposal would also fail to comply with this policy.

Living conditions

20. The Council's Environmental Health officer has raised concerns that the proposed development would be affected by noise and this could constrain the ongoing development of the nearby commercial uses. The site is around 270 metres from a commercial development that includes food packing facilities. It seems, from my general observations on site, that most activity is contained within the buildings with a small amount of external storage and delivery activity taking place to the rear.

21. A large field separates the commercial uses from the appeal site. This includes mature field boundaries, consisting of tree and hedge planting, that provide visual screening between the site and the commercial buildings. Whilst the proposed housing, would be closer to these buildings, it would not be appreciably nearer than existing dwellings within the village. Furthermore, the Council has not been able to draw my attention to any complaints that have been made by existing residents as to adverse noise from the commercial units. For these reasons it would be unnecessary to require a noise assessment to be undertaken prior to making a decision. Nonetheless, due to the relative proximity of the commercial development a condition could be applied, to any approval, requiring sound attenuation to be installed if necessary based on an assessment of existing noise levels.
22. Accordingly, the living conditions of future occupiers would be unlikely to be adversely affected by noise from the nearby commercial units and the proposed dwellings would not therefore affect the ongoing business as an agent of change. Consequently, the proposal would comply with LP policy HP4 and the Framework. These seek, among other matters, for development to not result in significant adverse impact on the amenity of occupiers and to create a high standard of amenity for future occupiers.

Biodiversity and Protected Species

23. LP Policy NE3 requires proposals to demonstrate that significant harm to ecology and biodiversity interests can be avoided, adequately mitigated or compensated for. Paragraph 180(d) of the Framework states that decisions should minimise impacts on and provide net gains for biodiversity. Paragraph 186 sets out the principles for proposals that would cause significant harm to these interests and the circumstances where permission should be refused.
24. Although no ecological survey has been submitted in support of the proposal, an ecological statement was submitted for a previous scheme on the site for nine dwellings. I understand that the statement identified that protected species may use habitats on or adjacent to the site. Whilst this statement is not in evidence, I note that a previous appeal decision on the site reported that the statement identified the need for further survey work and that no site-specific mitigation measures had been provided. Also, the Council informs that the statement identified that trees and hedgerows within the site had the capability of providing habitat for bats and nesting birds.
25. At the hearing the Appellant stated that the ecological statement related to a larger site and that the areas of ecological interest were not within the appeal site. However, the appeal site includes extensive field hedges, to its front and sides, which would be likely to possess some of the habitat interest identified within the original statement. Furthermore, the Appellant confirmed that some hedging would need to be removed around the access to create appropriate visibility splays, potentially eroding habitat on the site's periphery. Without an ecological survey, demonstrating the ecological and biodiversity value of the site, I am unable to conclude that protected species would not be harmed by the proposal. I am therefore unable to rule out that harm would arise in exercising my statutory duty in this respect. Moreover, the failure of the appellant to meet the provisions of the Wildlife and Countryside Act 1981 weighs considerably against the proposed development.

26. In this context, the need for adequate survey work is required prior to making a decision and cannot be reserved to conditions. As a result, the proposal has not demonstrated that it would not adversely affect protected species. The proposal would therefore conflict with LP policy NE3 and the Framework for the above reasons.

Agricultural land

27. Paragraph 174(b), of the Framework, places value on recognising the intrinsic character and beauty of the countryside including the best and most versatile agricultural land. The Framework's Glossary defines Best and Most versatile (BMV) land as being land of Grades 1, 2 and 3a. The site is classified as Grade 2 (very good quality) agricultural land and therefore is regarded as BMV land. Accordingly, the site has significant arable value and would no longer be capable of providing such a function.

28. A discussion at the hearing suggested that there is some dispute between parties as to the correct classification of the site. The Appellant has reviewed the land classification maps on Natural England's website and suggested that the site is on a boundary between Grade 2 and Grade 3 agricultural land. However, the limited evidence submitted to me on this subject, excluding any maps, does not clearly demonstrate that the site is not BMV land. Even if the site was classed as Grade 3 land, it seems more likely to be 3a, rather than 3b land, based on its proximity to Grade 2 land, thus remaining as BMV land in any event.

29. The proposed development would exclude the site from arable purposes. LP policy NE8 states that BMV land will be protected from development not associated with agriculture or forestry except where it can be demonstrated to be necessary. The land affected is relatively small, being only a small part of a larger field. Nevertheless, as some loss would occur, the proposal would be contrary to LP policy NE8 and the Framework, albeit raising a modest conflict only.

Planning obligation

30. The proposal is supported with two UUs. UU-A deals with SCB housing and is discussed below. UU-B is concerned with the provision of a parcel of land on site to be used as public open space (POS). The UU offers an area of open space to the local community which could include a playground. Although it is recognised that an area of recreational ground would be a benefit to the local community, the Appellant has not identified a policy requirement for the provision of public open space for this scale of development, this would therefore exceed policy requirements.

31. Accordingly, such provision would not comply with paragraph 57 of the Framework where it states that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly relate to the development and to fairly and reasonably relate in scale and kind to the development. Moreover, the provision of POS is not included in the description of development and is not indicated on the submitted plan as an area of non-residential use. The proposal does not therefore include the provision of POS. For these reasons, the offered provision of POS would not be a material benefit of the proposal.

Other Matters

Self and Custom Build Housing

32. The Self-Build and Custom Housebuilding Act 2015 (the Act) has placed a statutory duty on 'relevant authorities', including district councils, to keep a self-build and custom register. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and give enough suitable development permissions to meet the identified demand. The benefits of SCB housing are recognised by the PPG finding that it helps to diversify the housing market and increase customer choice. The Framework also supports the delivery of a variety of land coming forward to meet the needs of groups with specific housing requirements including for those people wishing to commission or build their own homes.
33. A Council's assessment of local housing need should include an assessment of people wishing to custom or self-build and to use the demand data from their register, supported as necessary by secondary sources, to understand the future need for this type of housing. The PPG provides several examples of how an authority can determine if an application or permission is for SCB housing. This includes whether it is clear that the initial owner will have a primary input into its final design and whether a community infrastructure levy or Section 106 exemption has been granted for a particular development.
34. The Council's Self-Built and Custom Housing Update Report [2023] provides its latest position with respect to SCB housing. The Report has reviewed demand and eliminated duplications from its register. It also removed people who did not reply to approaches to them asking if they were still interested in SCB housing. The Report shows that the register, held since 2016, has identified various levels of demand reaching, in cumulative terms, 352 people and organisations with an interest to build SCB housing (up to BP4), with the Council having three years to meet this demand.
35. Since 2021, the Council has monitored SCB supply in accordance with the methodology in the PPG². This states that permissions could include whether developers have identified that SCB housing is included, whether it is clear that the initial owner will have primary input into the final design and whether a Community Infrastructure Levy (CIL) provides an indication and/or a Legal Agreement has been granted for a particular development. This guidance coincided with the Council's adoption of CIL in 2020. Using this new approach the Council has determined that it has delivered 292 dwellings (BP 1-7) and 188 dwellings by BP4, which results in a 60 dwelling deficit. The base periods demonstrate a general trend of need not being met by delivery, indeed the Report concludes that there is an unmet demand for SCB housing.
36. At the hearing an extensive discussion covered issues with respect to both demand and supply. Overall, I find that the register seems to be somewhat suppressed as it is the only source used to identify demand and a wider source of materials would provide a more robust assessment of need. Furthermore, whilst some individuals and associations, on the register, did not reply to emails chasing continued interest, this does not necessarily mean that this demand no longer exists. The justification text for LP Policy HS3, for SCB

² Planning Practice Guidance: Paragraph: 038 Reference ID: 57-038-20210508

Housing, identifies that registers should be supported, as necessary, by additional sources, when preparing the Strategic Housing Market Assessment to understand the future needs for this type of housing. Consequently, a broader examination of need, using other SCB data sets, would be likely to reveal more demand than has currently been identified.

37. I enquired at the hearing as to the Council's intent in addressing the shortfall. The Council seemed to be largely reliant on future strategic sites and windfall sites being delivered to meet the identified deficit. LP policy HS3 explains that housing sites of over 500 dwellings must provide 5% SCB plots. A number of proposed developments were identified by the Council that are subject to this policy. The Council anticipates these will deliver twenty SCB units per year, with Legal Agreements securing the delivery of such housing, although these are still subject to reserved matter approval. Although, the Council is asking for the SCB housing on its larger sites to be brought forward in the delivery process, I consider that such housing would only be delivered over a number of years in the future. Accordingly, these sites will be unlikely to quickly address the Council's SCB housing deficit.
38. In monitoring permission plots, the identification of Legal Agreements or conditions are not a suitable sole indicator, as these are not required for all SCB housing. Nonetheless, the Council appears to have undertaken limited assessment as to the type of housing being delivered and it is not apparent that all housing counted within its supply is actually SCB housing based on the Appellant's assessment of permissioned plots. The Appellant identifies that the undersupply of SCB housing is 458 units, the Council identifies a shortfall of 89. Whilst it is difficult to come to a view as to the precise demand and supply figures based on the evidence before me, it seems that the deficit is nearer to the Appellants, rather than the Council's figures.
39. As a result, I conclude that the Council is not meeting its statutory duty with respect to the delivery of plots for SCB dwellings. This conclusion is the same as the previous two inspectors when considering previous schemes on site and this deficit carries substantial weight in favour of the proposal.
40. The Council finds that the first Legal Agreement (UU-A) would not adequately secure SCB housing. However, I am satisfied that, whilst the Agreement could be more robust, it would be sufficient to secure the housing in this form. Consequently, I am satisfied that the dwellings could be suitably secured by the proposed development and would meet the definition of SCB housing within the Act.

Eco Homes

41. The Appellant's Design and Access Statement explains that the proposed dwellings would be constructed to achieve passive house accreditation. The Planning Statement explains that the buildings would be built to the highest standard of environmental design, using building form and orientation, solar gain, air-tightness, insulation and mechanical ventilation and heat recovery systems to enable these to seek Passivhaus Certification.
42. LP policy CC4 relates to matters of sustainable design. This requires all development to be designed to reduce both the extent and the impacts of climate change and promotes zero carbon development. The policy explains

that the Council expects new development to incorporate passive design measures to reduce the need for artificial lighting and heating, cooling and ventilation systems through siting, design layout and building orientation. The proposal would satisfy this policy and would exceed its requirements as the policy only seeks to promote zero carbon development. Therefore, whilst compliance with policy would normally be a neutral matter, in exceeding the policy requirements, I have ascribed weight to this as a benefit of the scheme, albeit modest due to the small scale of the proposal.

Other considerations

43. LP Policy HS3 identifies that SCB housing should largely be delivered on the strategic housing sites of the development plan. The supporting justification also identifies that for this type of housing it is expected that a proportion would also come forward on small sites and single plots on infill sites and sites on the edge of settlements. A discussion at the hearing centred on whether this commentary provided support for the scheme, being an edge of settlement site. However, the supporting commentary is not, in itself, policy and my reading of this does not describe where such development would be suitable but simply identifies where such sites may emerge. Accordingly, policy HS3 weighs neither for, nor against, the proposal as it does not consist of a strategic site.
44. The appellant has drawn my attention to six appeal decisions where SCB housing has been a factor.
45. Land at Hepworth Road, Woodville (APP/G2435/W/18/3214451 and APP/G2435/Q/18/3214498) was a linked appeal for thirty SCB houses outside the defined limits of the settlement. The appeal found that the Council had a deficit of such housing and that the provision of 30 units would be a material consideration that weighs strongly in favour of the proposal. The decision found that the benefits of development, including a boost to the local economy, provision of SCB housing and other benefits outweighed the conflict found with the development plan.
46. Land to the rear of Brock Cottage, Brize Norton (APP/D3125/W/21/3274197) was for two SCB houses. The decision found that there was a deficit in supply of this type of housing and this outweighed the limited conflict found with the development plan.
47. Orchard House, Kidderminster (APP/R1845/W/21/3284761) was for four SCB homes. The decision noted that there were no policies pertaining to SCB housing in the development plan. In finding a deficit for the provision of SCB housing, the decision found that the benefits of the proposal outweighed the conflict found with the development plan.
48. Land West of Suffolk House, Norton (APP/W3520/W/23/3316136) was for nine SCB housing. The decision identified a deficit of SCB housing, and this weighed substantially in favour of the scheme. Also, the Council did not have a SCB housing policy and thus the 'tilted balance' was engaged. The allowed decision found that the conflict with the development plan did not significantly and demonstrably outweigh the benefits.

49. Spring Lane Farm, Pannal (APP/E2734/W/20/3259171) was for 48 dwellings including up to 29 SCB housing within Harrogate. This decision was dismissed but identified failings in the Council's figures with respect to SCB housing, identifying a significant deficit.
50. Land adjoining Pondview, Holyport (APP/T0355/W/22/3309281 and APP/T0355/W/23/3314990) were linked appeals for four SCB houses. The allowed scheme found conflict within the development plan in terms of Green Belt harm that was outweighed by the under provision of SCB housing which was found to be a matter of overriding weight.
51. The circumstances of the above cases are not directly the same to this case, but these decisions emphasise the need to consider and determine each proposal on its own merits in accordance with the development plan unless material considerations indicate otherwise. I have therefore arrived at a balanced judgement taking account of the evidence submitted.

Planning balance and Conclusion

52. I have concluded that the proposed development would result in significant harm to the landscape character and an adverse visual impact and would result in flood risk. I have also found that the proposal would result in moderate harm to the loss of agricultural land and could affect protected species which would result in significant harm. Whereas, I have not found harm to future occupier's living conditions by virtue of noise disturbance. The various harms caused by the proposal have resulted in conflict with policies GS2, GS3, CC1, CC3, HP3, NE3, NE4 and NE8 of the development plan. Planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise as stated by paragraph 2 of the Framework.
53. The Framework seeks to boost the supply of housing. The Council has a 5-year land supply of housing. Although paragraph 69 of the Framework, seeks a 5-year supply of housing, this does not place a ceiling on further housing. Further, the Framework is clear that small and medium sized sites can make an important contribution to meeting the housing requirement in an area and can often be built out relatively quickly. The proposal would deliver up to four homes for SCB housing. As the Council is not facilitating an adequate supply of this type of housing, it is failing in its statutory duty. This provision would therefore garner significant weight in favour of the proposal.
54. The proposed development would also consist of eco homes. The homes are proposed to be constructed to a high specification that would enable the buildings to apply for passive house certification. This requirement could be secured by condition if the appeal were to be allowed. The benefit of such development is welcomed, but these could be delivered on other sites in the district that do not raise such conflict with the development plan. Consequently, the benefits conveyed by the proposed eco homes attract only moderate weight in support of the scheme.
55. Nonetheless, the benefits of the proposal, including those of significant weight, are of insufficient magnitude to outweigh the broad and significant conflict found with the development plan with respect to spatial housing, flooding, character and appearance, protected species and agricultural land.

Accordingly, the proposal would conflict with the development plan when taken as a whole and material considerations would not outweigh the conflict found.

56. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR

APPEARANCES

For the Appellant:

Ben Holmes – Holmes Planning Ltd

For the Council:

Jillian Rann BA (Hons), MSc, MRTPI – Principal Planning Officer - Development

Jane Lurcuck – Principal Planning Policy & Place Officer

Emma Howson – Principal Planning Officer - Development

Interested parties:

William Elliott – Goldsborough & Flaxby Grouped Parish Council