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## Appeal Decision

Site visit made on 8 March 2016

**by Roger Catchpole DipHort BSc(hons) PhD MCIEEM**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 May 2016

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**Appeal Ref: APP/E2001/W/15/3140842**

**Land to the east of Southwood Park, Kellythorpe, East Riding of Yorkshire YO25 9HG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Peter Ward (Peter Ward Homes Ltd & Broadland Properties Estates Ltd) against the decision of East Riding of Yorkshire Council.
  - The application Ref DC/15/00008/STPLF/STRAT, dated 3 February 2015, was refused by notice dated 30 June 2015.
  - The development proposed is a residential development to construct 30 new dwellings (including 8 No. affordable homes) with associated parking.
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### Decision

1. The appeal is allowed and planning permission is granted for a residential development to construct 30 new dwellings (including 8 No. affordable homes) with associated parking on land to the east of Southwood Park, Kellythorpe, East Riding of Yorkshire YO25 9HG in accordance with the terms of the application, Ref DC/15/00008/STPLF/STRAT, dated 3 February 2015, subject to the conditions set out in the schedule at the end of this decision.

### Preliminary Matters

2. An emerging local plan was at an advanced stage when the application was determined by the Council and comprised two documents: The East Riding Local Plan: Proposed Submission Strategy Document January 2014 and The East Riding Local Plan: Proposed Submission Allocations Document January 2014. The former was subsequently adopted after this appeal was submitted whilst the latter is still emerging and subject to the Inspector's final report. Both parties have been given an opportunity to respond to this newly adopted plan and I am satisfied that their interests have not been prejudiced. I have determined this appeal with principle reference to policies S3, S4 and H2 of the East Riding Local Plan 2012-2029 Strategy Document 2016 (LP) and the National Planning Policy Framework 2012 (the Framework).
  3. The appeal site is identified as a committed housing site in map insert D29 of East Yorkshire Borough Wide Local Plan 1997 (BWLP) but has been excluded from the emerging allocations document. Whilst at an advanced stage, the Inspector's report is yet to be published and the exclusion of the appeal site has been subject to objection. Consequently, its designation carries weight in the balance of this appeal because Part II of the BWLP remains extant and is yet to be superseded by the emerging allocations document.
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4. The Council have made reference to changes in the Planning Practice Guidance 2014 (as amended) (PPG) that were prompted by a Written Ministerial Statement on the 28 November 2014 regarding affordable housing contributions. A subsequent High Court judgement<sup>1</sup> determined that the policies set out in the statement and the relevant sections of the PPG could not be treated as a material consideration in planning decisions. Consequently, the relevant sections of the PPG were removed on the 31 July 2015. As a result the Interim Approach used by the Council to calculate affordable housing contributions remains valid. This is the basis on which this appeal has been determined.

### **Main Issues**

5. In light of current and emerging policy on the location of new development the main issues are the effect of the proposal on the character and appearance of the open countryside and whether or not the proposal would amount to a sustainable form of development.

### **Reasons**

#### *Character and appearance*

6. The appeal site is situated approximately 2 km to the south west of Driffield town centre. It is a rectangular area of rough grassland of approximately 1 ha. Its western boundary abuts an established residential area comprising former Ministry of Defence housing and more recently constructed dwellings. All of the remaining boundaries abut agricultural land. The houses along the western boundary were constructed by the appellant and the development of the appeal site is the final phase of the intended build out of the allocated land. However, as was previously the case, the appeal site is not within a defined development limit it is classified as open countryside according to policy S3 of the LP.
7. Despite the presence of open countryside on three sides I observed that the appeal site is not isolated and that the proposed development would be well related in scale and location to the adjacent residential housing thus avoiding the creation of isolated homes in the countryside. It would form a natural extension that would not have a significant material impact on the character of the surrounding area. This is because the rough, unmanaged nature of the grassland and artefacts related to its previous use, e.g. concrete hard standing and a lamp post, give it a derelict, unkempt appearance that is significantly at odds with not only the surrounding agricultural land but also the adjacent residential area. The Council are of the opinion that the site does not fall within the definition of previously developed land because its fixed surface structures have blended back into the landscape with the progress of time and I am inclined to agree on the basis of the preceding observations.
8. Policy S4 of the LP sets out the circumstances in which development in the countryside will be supported. Bearing in mind that the proposal would not lead to the loss of agricultural land and its scale would be appropriate to its location, the most relevant policy considerations are whether or not it would provide affordable housing for local people and utilise previously developed land. I note from the evidence before me that the need for affordable housing remains high throughout the local authority area and that the examining

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<sup>1</sup> West Berkshire District Council & Reading Borough Council vs DCLG [2015] EWHC 2222 (Admin)

Inspector of the newly adopted development plan found that the identified need for affordable housing will not be met despite the widening of the geographical area in which affordable, rural exception schemes will be supported.

9. Policy H2 of the LP requires 25% of new housing in Driffield to be affordable in schemes of ten or more dwellings. A completed unilateral undertaking has been provided in excess of this requirement, with 27% of the homes allocated to the appeal site and 13% elsewhere. However, as a rural exception site, this policy requires 100% affordable housing provision and at least 80% if the higher figure is not achievable. It also requires schemes to be well related to established development limits. Notwithstanding the adjacent housing and the allocation of the Alamein site, I accept that the appeal site is nonetheless remote from the main settlement and therefore not well related.
10. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst the proposal would conflict with policy H2 of the LP it would nevertheless be supported by policies S3 and S4 of the LP which have an overall aim of ensuring the right development in the right place and protecting the intrinsic character of the countryside. This is because the scale of the proposal is limited to just 30 dwellings and it would be adjacent to an established area of residential housing. Furthermore, it is clear that the appeal site would become less remote given the proposed development of the Alamein site which lies in close proximity, some 500m to the north. This would potentially allow future occupants to benefit from the improved alternative transport links with the town centre, thus improving overall accessibility.
11. The appellant is of the opinion that the delivery of an early contribution to affordable housing would arise from the scheme. Whilst a number of development sites have been identified in Driffield which may also make a contribution, not least the nearby Alamein site which has an indicative capacity of 480 units, it is clear that additional affordable housing contributions need to be secured bearing in mind the view of the Examining Inspector.
12. Given the above, I conclude that the proposal would not cause significant harm to the character and appearance of the open countryside. Whilst it would conflict with policy H2 of the LP, it would nevertheless be consistent with the main thrust of policies S3 and S4 of the LP. Consequently, I find that the proposal would, on balance, be in accordance with the development plan as a whole.

#### *Sustainable development*

13. The Council are of the opinion that the proposal would not constitute sustainable development by virtue of its location. However, paragraph 7 of the Framework advises that there are three dimensions to sustainable development: economic, social and environmental. In order to achieve sustainable development, the Framework advises that the planning system should ensure that economic, social and environmental gains are sought jointly and simultaneously.
14. In social terms the proposal would help to deliver an identified need for affordable homes. This would help to support a strong, vibrant healthy community by meeting the needs of present and future generations. In

economic terms it would benefit local businesses during the construction phase through the need to supply labour and materials. Once complete it may also lead to increased profit to local businesses arising from, albeit limited but nevertheless, increased custom. In environmental terms I accept that the development is remote from the town centre and there is clear potential for an over-reliance on private motor vehicles.

15. However, some day-to-day needs could clearly be met by the nearby farm shop. I observed that walkways with street lighting provide safe pedestrian access to this local service without a need to cross any main roads. A bus stop is also within safe and easy walking distance with a regular bus service of nine buses per day linking the site with the town centre. This would enable future occupants to access the full range of local services and enable onward rail journeys to more distant locations.
16. I also note that the Kellythorpe Industrial Estate lies some 500 m to the north and that this would be capable of providing employment opportunities for future occupants. Consequently, I am satisfied that there would not be an exclusive reliance on private motor vehicles and that alternative modes of transport would be present. This would accord with paragraph 29 of the Framework which recognises that opportunities to maximise sustainable transport solutions vary in rural areas.
17. Having had regard to the policies of the Framework as a whole, I conclude that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits. Consequently, it would amount to a sustainable form of development and would thus be consistent with paragraph 14 of the Framework.

### **Other Matters**

18. A significant number of objections were concerned with the potential impact of the proposal on the safe and efficient operation of the local highway network. I note from the plans that all of the proposed dwellings would have off-street parking and that a greater capacity would be present for the larger dwellings with spaces for two or more cars. The Council has acknowledged that the proposal would meet the necessary standards. The Council asserts that the development would generate a significant number of traffic movements although its own highway development control officer concluded that the proposal would not lead to an unacceptable increase in traffic movement. Given that only 30 new dwellings have been proposed I am not satisfied that this would, in fact, be the case.
19. Recent case law<sup>2</sup> has established that development should only be refused on transport grounds when its residual impacts are severe as advised in paragraph 32 of the Framework. In the absence of any substantiated evidence to the contrary, quantifying existing movements and how they are likely to change as a result of the proposed development, I can only give this matter limited weight. In relation to the suitability of the access along Auchinleck Close, whilst only a snapshot, I observed that off road parking was available and that the road was wide enough to permit the bi-directional movement of vehicles.

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<sup>2</sup> Eshton Gregory (Hebden Bridge) Ltd v SoS CLG & Calderdale Metropolitan Borough Council [2015] EWHC 3611 (Admin)

20. I acknowledge the considerable local interest shown in the proposal and have had full regard to the representations made at the application and appeal stages. The level of local opposition is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons, which are supported by substantiated evidence. Having taken account of all the evidence before me, I am satisfied that all other objections, taken individually and together, do not outweigh my findings in relation to the main issue or any of the other matters raised.

### **Conclusion & Conditions**

21. For the above reasons and having regard to all other matters raised I conclude that, subject to appropriate conditions, the appeal should be allowed.
22. I have considered both the wording and grounds for the conditions suggested by the Council in accordance with the tests set out in paragraph 206 of the Framework.
23. In addition to the standard time limit condition, a condition requiring development to be carried out in accordance with the plans is necessary for the avoidance of doubt and in the interests of proper planning.
24. Five conditions requiring further details of landscaping, boundary treatments, a landscape management plan, hedgerow retention measures and the submission of samples are necessary in the interests of character and appearance.
25. In order to protect the living conditions of nearby residents during the construction phase of the development, two conditions are necessary to regulate working hours and the times at which deliveries can be made to the site.
26. A condition requiring obscure glazing and its retention in one of the proposed dwellings is necessary in the interests of preserving the privacy of existing residents.
27. A condition requiring further details of a scheme of ecological mitigation, enhancement and management is necessary in the interests of biodiversity enhancement.
28. Four conditions requiring further details of a sustainable drainage scheme, the diversion of existing sewers, installation of sewage disposal systems and flood protection measures are necessary in the interests of protecting the living conditions of future occupants and the aquatic environment.
29. Four conditions requiring further details of the access road, the construction of access routes prior to first occupation, parking and the retention of a service strip are necessary in the interests of highway safety.
30. A condition requiring a programme of archaeological investigation is necessary in the interests of preserving any non-designated heritage assets.

*Roger Catchpole*

INSPECTOR

## CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2913.100c.pA; 2913.10.pA; 2913.11.pA; 2913.13.pA; 2913.14.pA; 2913.16a.pA; 2913.18.pA; 2913.19.pA; 2913.20a.pA; 2913.25.pA; 2913.26.pA; 2913.27.pA; 2913.28.pA; 2913.29.pA; 2913.30.pA; 2913.31.pA; and 2913.32.pA.
- 3) No development shall take place above damp proof course until full details of both hard and soft landscape works for the whole site, together with a programme of implementation, have been submitted to and approved in writing by the local planning authority. These details shall include: a means of enclosure; hard surfacing materials; and a planting plan. All work shall be carried out in accordance with the approved details prior to the first occupation of any dwelling.
- 4) No development shall take place above damp proof course until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 6) No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Before the first occupation the first floor window on the western elevation of the dwelling on plot 23 shall be fitted with obscured glass and shall be permanently retained in that condition.
- 8) No deliveries shall be taken at or despatched from the site during the construction phase of the development outside 0700 hours to 1900 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays. This shall include the loading and unloading of raw materials.
- 9) Ground clearance or construction works shall not take place outside 0700 hours to 1900 hours Mondays to Fridays and 0700 hours to 1300 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays.
- 10) No development shall take place until a scheme prepared by a suitably qualified ecologist providing full details of all ecological mitigation, enhancement and management has been submitted to and approved in

writing by the local planning authority. These details shall include: a timetable for implementation and monitoring; mitigation, compensation and enhancement measures as previously defined<sup>3</sup>; wetland biodiversity enhancement measures associated with the agreed sustainable drainage scheme; biodiversity measures for green corridors and open spaces; a lighting strategy to enable bat foraging and bird nesting; materials, design and location of 10 bat boxes and 10 bird boxes; site working practices in relation to protected species; and wildlife enhancement literature for new occupants. Development shall be carried out in accordance with the approved scheme.

- 11) All existing hedgerows shall be retained at a height of not less than 3m unless shown on the approved plans as being removed. All retained and adjoining hedgerows shall be protected by the erection of fencing. This shall be undertaken in accordance with British Standard BS 5837:2012 before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority. If any part of the retained hedgerow is removed, uprooted or destroyed or dies, trees shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- 12) No development shall take place until details of the implementation, maintenance and management of the proposed sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include a timetable for its implementation, as well as a management and maintenance plan, for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
- 13) No development shall take place above ground level until measures to divert existing sewers that are laid within the site have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority.
- 14) None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
- 15) The development hereby permitted shall be carried out in accordance with the recommendations of the Flood Risk Assessment<sup>4</sup> ensuring that all finished floor levels are set at 19.23 m AOD and that all soakaways

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<sup>3</sup> Section 7 of the Extended Phase I Habitat Survey (Wold Ecology Ltd, February 2014) and section 5 of the Great Crested Newt Survey Report (Wold Ecology Ltd, March-April 2014)

<sup>4</sup> Flood Risk Assessment Report (Cubus Drainage, Report 2159)

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are capable of draining storm water arising from extreme weather events and no closer than 5 m from any new or existing building.

- 16) No development shall take place until details of the access road, including its connection with Auchinleck Close, have been submitted to and approved in writing by the local planning authority. These details shall include scaled, cross-sectional construction drawings of the road and a layout drawing showing the location of services, drains and lighting. Development shall be carried out in accordance with the approved details.
- 17) No dwelling shall be occupied until that part of the service road which provides access to it from Auchinleck Close has been constructed in accordance with the approved plans.
- 18) No dwelling shall be occupied until space has been laid out within its curtilage for cars to be parked in accordance with the details hereby approved and that area shall not thereafter be used for any purpose other than the parking of vehicles.
- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no fences, gates or walls shall be erected within the service strip identified in the approved plans.
- 20) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

Richborough Estates