



Appeal Decision

Site visit made on 28 June 2016

by **I Radcliffe BSc(Hons) MCIEH DMS**

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

Decision date: 12 July 2016

Appeal Ref: APP/E2001/W/16/3147471

Land south of Cherry Tree Lane, Hedon, East Riding of Yorkshire HU12 8JZ

- 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 Birstall May Limited against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/14/03927/PLF/EASTSE, dated 5 December 2014, was refused by notice dated 8 December 2015.
 - The development proposed is residential development of 28 two storey dwellings with associated access roads, landscaping including provision of wildlife ponds and associated work including flood alleviation works.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Since the application was determined by the Council the East Riding Local Plan Strategy Document (ERLP) has been adopted replacing the Holderness District Wide Local Plan and the Joint Structure Plan. I have dealt with the appeal on this basis.

Main Issue

3. The main issue in this appeal is whether the appeal scheme comprises sustainable development as defined the National Planning Policy Framework ('The Framework'), having particular regard to:
 - the effect of the proposed development on the character and appearance of the area, with particular regard to the setting of Hedon Conservation Area and the town's medieval defences which are a Scheduled Monument;
 - the size of the houses proposed;
 - the effect of the proposal on open space and affordable housing provision; and,
 - whether the proposal would comply with planning policy which seeks to steer development away from areas at the highest risk of flooding.

Reasons

Character and appearance

4. In principle residential development with Hedon is supported. The appeal site is a field located close to the town centre. The recently replaced Holderness District Wide Local Plan designated the appeal site as an important open area protected from development. Whilst that plan now no longer forms part of the
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development plan, policy ENV2 of its replacement, the East Riding Local Plan Strategy Document (ERLP), seeks to protect and enhance important open spaces within settlements that contribute to their character. The question which therefore arises is does the appeal site constitutes an important open space? It is to this matter that I now turn.

5. The appeal site lies next to Hedon Conservation Area which covers the town centre. Whilst no statutory protection is afforded to the setting of heritage assets such as Conservation Areas and Scheduled Monuments, paragraphs 128 and 129 of the Framework require an assessment of the significance of heritage assets that might be affected by a development proposal, including any contribution to their significance made by the setting of those assets. Paragraph 132 of the Framework confirms that the significance of a heritage asset can be harmed or lost through development within its setting. The same paragraph also advises that great weight should be given to the conservation of such assets.
6. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. In essence, if the development proposed could be seen from, or in conjunction with, any of the heritage assets that surround the application site, then there would be an impact on their setting. An assessment is then required as to whether that impact would harm the significance of the asset.
7. In terms of assessing the significance of the Conservation Area, I have relied upon the Conservation Area Appraisal, the comments and work of the main parties and the comments of those who have written in together with my own observations during the site visit. The special character and appearance of the Conservation Area is defined by the interplay between 18th century and 19th century buildings within a constricted town centre into which relatively little 20th century development has intruded. The significance of the Conservation Area derives not only from its historical settlement pattern and many listed buildings, but also from those green spaces within it and which form part of its setting. This setting allows for an understanding and appreciation of the Conservation Area's significance and provides a historical context for the market town.
8. Whilst much of the Conservation Area is surrounded by built development the appeal site, referred to as Wychcroft in the Appraisal, provides the Conservation Area with an open rural setting appreciated in outward views from within the Conservation Area. Even with the buffer and reinforced planting along the western boundary of the appeal site the proposed development would create a strong urban presence in these views, particularly in the colder months of the year when trees are not in leaf. As a result, I consider that the open space is important to the setting of the Conservation area and that the development proposed would have an adverse impact on its setting and significance.
9. In relation to the town's medieval defences, which are a Scheduled Monument, I have relied upon the comments received, the assessment work that has been carried out and my own observations. The significance of the defences is historical. A large part of the scheduled area has been built upon. However, this is not the case in the vicinity of the appeal site. The defences, which consist of a very low earthwork bank and a largely infilled ditch, are located along the northern and eastern sides of the appeal site. The elements of

setting that contribute to the significance of the defences are the drain along its outer northern side and the edge of the field along its inside. In that context, I consider that the vast majority of the appeal site contributes little to its significance or setting. By including an area of the field protected from development several metres in depth following the line of the defences, the proposal would not adversely affect the setting of the Scheduled Monument. I therefore find that its significance and setting would not be harmed by the proposed development.

10. In terms of the proposed developments relationship to its surroundings outside of the Conservation Area, immediately around the appeal site the pattern of residential development is characterised by detached housing on spacious plots. Consequently, a coarse grain of suburban development prevails. In contrast, the appeal scheme proposes two terraced crescents, a far more urban, finely grained form of development. As a result, the scheme would be out of keeping with the pattern of development that characterises the area and would fail to integrate with the built environment, contrary to paragraph 61 of the Framework.
11. With regard to the detailed design of the scheme, parking would be located to the front of the proposed houses. Whilst this could lead to car dominated development, in this instance the presence of front gardens separating the parking areas from the houses would be sufficient to prevent this from occurring. With the location of the larger amenity space to each house to the front, the potential for the use of tall boundary treatments around the front gardens to protect privacy exists. Such treatments would reduce the contribution of the houses to the streetscene and lessen natural surveillance of the street. However, I am satisfied that this matter could be controlled by the suggested landscaping condition which requires details of means of enclosure to be submitted and approved. With regard to appearance, the houses would be of an acceptable design.
12. Notwithstanding my favourable findings regarding the detailed design of the scheme, this does not overcome the significant adverse effect that would be caused in relation to the effect of the proposal on the pattern of development in the area. As a result, it would not represent good design as sought by the Framework and so would be contrary to policy ENV1 of the ERLP.

Conclusion on the effect of the proposal on the Conservation Area and Scheduled Monument

13. Whilst I have found that the setting and significance of the Scheduled Monument would not be adversely affected by the proposal, the setting and significance of the Conservation Area would be. The harm that would be caused to the setting and significance of the Conservation Area would be less than substantial. In such circumstances, paragraph 134 of the Framework advises that the harm that would be caused should be weighed against the public benefits of the proposal.
14. In accordance with the statutory duty described, I attach considerable importance and weight to the harm that would be caused to the setting of Hedon Conservation Area. On the other side of the balance, the proposed development in providing twenty eight dwellings in an accessible location would help meet the demand for housing. However, the social benefits in this regard are significantly reduced because, for the reasons given later in this decision, the housing is not of the size required to meet local housing need for open

market or affordable homes. Similarly, the scheme would not adequately address the needs that exist in relation to the provision of open space. The construction of the development would result in employment, generate economic activity and following completion increase local spending power to an extent. However, given the scale of development proposed the benefit of additional housing economically is likely to be limited. With the creation of a lagoon and further planting the potential for enhancing the ecological value of the site exists. These considerations are of some weight in favour of the development.

15. Taking all these matters into account, my overall conclusion is that the public benefits of the proposal do not outweigh the harm that would be caused to the setting and significance of the Conservation Area. The proposal would therefore be contrary to the Framework and conflict with policies ENV1, ENV2, ENV3 and A1 of the ERLP. These policies, amongst other matters, seek to protect the setting of heritage assets and important open spaces within settlements that contribute to their character.

House sizes

16. The Framework advises that in order to deliver a wide choice of high quality homes and, amongst other matters, create sustainable, inclusive and mixed communities local planning authorities should plan for a mix of housing. Such a mix should be based upon the needs of different groups in the community and involve identifying the size and range of housing that is required. Policies H1, H2 and A1 of the ERLP are consistent with this approach.
17. The Strategic Market Housing Assessment carried out in 2011 identifies a shortage of smaller homes. However, the proposed development would only provide three and four bedroomed houses. In relation to open market housing, the appellant states that there are no new housing schemes in the area and that the proposed expansion of a local employment area will increase the demand for housing. Whilst this may be the case, this does not justify a scheme that makes no provision for smaller homes that are needed locally.
18. With regard to affordable homes, the appellant's view is that the provision of larger dwellings, when the identified need is for only for one and two bedroom units, is a positive feature of the scheme. However, the Council has confirmed that it has an adequate supply of larger affordable homes. As a result, the needs of small households on limited means who require affordable housing would remain unmet by the proposed scheme.
19. In not meeting the need for smaller properties, including the need for older people and first time buyers, the scheme would fail to provide a suitable mix of housing and so would undermine the creation of a sustainable, inclusive and mixed community. This would be contrary to policies H1, H2 and A1 of the ERLP and paragraph 50 of the Framework.

Open space

20. The Council seeks a contribution of £41,418 towards the off-site provision of outdoor sport and recreation. It also seeks the on-site provision of amenity space for children and amenity green space. However, no planning obligation to secure such payment or the delivery, transfer and future maintenance of on-site space has been submitted by the appellant. The provisions sought have been assessed having regard to the tests in paragraph 204 of the Framework

and the requirements of Regulations 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

21. In terms of public open space, when measured against the assessments of open space that have been carried out in the East Riding there is insufficient local provision. Contributions are therefore necessary to mitigate the effect of the development and make it acceptable in planning terms. Policy C3 of the ERLP sets out the resulting standards that are sought. The Council's draft supplementary planning document on Open Space provides further advice in this regard. As a consequence, I find that the contribution and amount of amenity space sought satisfies the tests in the Framework and accords with Regulation 122.
22. In relation to the off-site provision of outdoor sport and recreation, the absence of a contribution would mean that the proposed development would increase pressure on the existing open space available. With regard to the children's play space and amenity green space, the absence of a planning obligation to secure the delivery, transfer and future maintenance of such on-site space could not be guaranteed. Even if this was not the case, the children's play space would be located on the periphery of the site by the vehicular access, rather than in a central location overlooked by houses within the scheme. As a result, the level of informal supervision that it is reasonable to expect of a children's play area within a new development would not be provided.
23. Taking all these matters into account, I therefore conclude that the proposed development in not providing sufficient or adequate open space would unacceptably harm such provision in the area. This would be contrary to policy C3 of the ERLP which requires that new development maintains and / or enhances the quantity, quality and accessibility of open space provision.

Affordable housing

24. In relation to affordable housing, in accordance with policy H2 of the ERLP and the supplementary planning document on Affordable Housing (SPD), provision needs to be made for three, two bedroom dwellings and one, three bedroom dwelling to help meet the identified need for affordable housing in the area. The provision of such housing is therefore necessary to make the development acceptable in planning terms, directly related to the proposal, and on the basis of the Council's policy, reasonably related in scale and kind to it. The provision sought therefore complies with paragraph 204 of the Framework and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
25. No planning obligation has been provided securing such provision. Even if the required mix of smaller units of accommodation was proposed by the appellant, in the absence of a completed planning obligation the delivery and retention of such housing could not be guaranteed. As a consequence, I therefore find that the proposed development would materially harm the supply of affordable housing in the area. This would be contrary to policy H2 of the ERLP which requires that the amount of affordable housing and its size and type will be informed by the latest Strategic Market Housing Assessment and related sources of information.

Flood risk

26. The appeal site is located within Flood Zone 3 which has a high probability of flooding. The Framework advises inappropriate development should be

directed away from areas of highest flood risk by applying the Sequential Test. On the basis of the information submitted by the appellant, the Council is of the view that this test is passed. I have no reason to disagree with that position.

27. Schemes for housing within Flood Zone 3 that pass the Sequential Test must also pass the Exception Test. As part of this test, it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk.
28. The scheme would provide housing in a location with good access to the town centre and the services and facilities it has to offer. Nevertheless, the provision of only larger family sized homes in the scheme would not help address the need for smaller dwellings and so would not contribute to creating sustainable, mixed and inclusive communities in accordance with paragraph 50 of the Framework. With the harm that would be caused to the setting of the Conservation Area, and the fact that affordable housing and open space provision has not been satisfactorily addressed or secured, the sustainability benefits to the community of the proposal are limited and do not outweigh flood risk. Therefore notwithstanding that a satisfactory site specific flood risk assessment has been submitted the proposed development fails the Exception Test. As such it would be contrary to policy ENV16 of the ERLP, which manages environmental hazards, and the Framework.

Overall Conclusions

29. The appeal scheme needs to be considered in the context of the Framework's presumption in favour of sustainable development. The policies of the Framework as a whole constitute the Government's view of what such development means in practice. There are three dimensions to sustainable development: environmental, economic and social.
30. In terms of the environment, the site is in an accessible location, flood risk could be managed and the ecological value of the site could be enhanced. However, harm would be caused to the setting of the Conservation Area, and the character and appearance of the area, through the loss of the site to development in the manner proposed. Public open space provision to address the demand generated by the proposal has not been secured and the provision of open space on site would be poorly located.
31. Socially, although new housing would be provided the benefit in this regard is limited as the size of dwellings proposed, and the absence of a planning obligation to secure the delivery of affordable housing, would mean that the proposal would not contribute towards creating sustainable, inclusive and mixed communities. Economically, the boost to employment and the local economy would be beneficial.
32. Taking all these matters into account, the social, economic and environmental benefits are limited and of insufficient weight to outweigh the significant harm that would be caused. As a result, the proposal would not represent sustainable development as defined in the Framework. For the reasons given above, and having regard to all other matters raised, the appeal should be dismissed.

Ian Radcliffe

Inspector