



## Appeal Decision

Hearing held on 3 August 2016

Site visit made on 3 August 2016

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

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

**Decision date: 22 August 2016**

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**Appeal Ref: APP/N2739/W/16/3149401**

**Glenholme, 7 Kellington Lane, Eggborough, Selby DN14 0LB**

- 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 and Mrs Thornton against the decision of Selby District Council.
  - The application Ref: 2015/1299/OUT, dated 20 November 2015, was refused by notice dated 2 March 2016.
  - The development proposed is the erection of a residential development following the demolition of the existing dwelling 'Glenholme' and the back-filling of a recently constructed fish pond.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was submitted in outline with only access to be determined at this stage. This issue has not, however, been considered because it was not relevant to the main issues and therefore not determinative.
3. The Council has an emerging plan that is at an early stage and is yet to be examined in public. As its policies have not been tested and may be subject to modification it carries little weight in the balance of this appeal.
4. For reasons of clarity, I have shortened the description of development to remove unnecessary wording for the purposes of this appeal.
5. An incomplete Section 106, with contested wording, was submitted prior to the Hearing. Although an opportunity was provided for its amendment, the exact wording could not be agreed. Consequently, this appeal has been determined on the basis that an obligation for the on-site provision of affordable housing, waste disposal facilities and open space is required but has not been provided.

### Main Issues

6. The main issues are:
    - whether the Council has a five year supply of deliverable housing land;
    - the effect of the proposal on the character and appearance of the local area;
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- whether the proposal would constitute a sustainable form of development; and
- if a five-year supply of deliverable housing land cannot be demonstrated, whether other material considerations would significantly and demonstrably outweigh the benefits of the scheme.

### **Reasons**

7. The proposal consists of a residential development of up to 45 dwellings on a green field site, part of which has been excavated to create a commercial fishery. An access to the site would be created through the demolition of an existing detached dwelling, Glenholme, which is part of a short ribbon development facing Kellington Lane on the edge of the village of Eggborough.

#### *Development plan*

8. The development plan comprises the Selby District Core Strategy Local Plan 2013 (CS) and the Selby District Local Plan Part 1: General Policies 2005 (LP). Bearing in mind the main issues of this appeal and the outcome of the Hearing, the most relevant policies are: SP2A, SP5 and SP19 of the CS and ENV1 of the LP. Policy SP2A defines a three tier settlement hierarchy comprising the Principal Town of Selby, the Local Service Centres of Sherburn-in-Elmet and Tadcaster and a number of Designated Service Villages (DSVs) which includes the nearest village to the appeal site, Eggborough. Policy SP5 defines the distribution and scale of new housing that should be delivered over the plan period whilst SP19 seeks, among other things, to ensure that new development does not compromise local distinctiveness, character or form. Policy ENV1 of the LP has a similar purpose and seeks to ensure that a good quality of development is achieved that does not have an adverse effect on the character of an area.
9. Policy SP2A restricts non-allocated development outside development limits which is only permitted under specific circumstances which do not apply in this particular instance. It is common ground that this is the case and that the site is situated outside the development limit. However, the appellant has argued that the Council cannot demonstrate a deliverable 5-year housing land supply and that neither this policy nor policy SP5 of the CS consequently apply. As these policies are related to the supply of housing, paragraph 49 of the National Planning Policy Framework 2012 (the Framework) advises that they should not be considered up-to-date and that applications should be considered in the context of a presumption in favour of sustainable development under such circumstances.

#### *Five-year requirement*

10. Policy SP5 of the CS requires the delivery of 7,200 dwellings between 2011 and 2027 at a minimum delivery rate of 450 per annum. The minimum housing requirement across all DSVs over the plan period stands at 2000 dwellings, representing 29% of the total housing requirement. A recent Council monitoring report<sup>1</sup> indicates that since the beginning of the plan period 547 dwellings have been completed and that planning permission has been granted on a further 1,413 dwellings, leaving a residual housing need of 34 dwellings across all DSVs. However, net completions over the plan period, up until

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<sup>1</sup> Selby District Local Plan Authority Monitoring Report, November 2015.

- 1 October 2015, stood at 1,636 with a shortfall of 389 dwellings. This was largely due to the under-performance of the larger settlements of Selby, Sherburn-in-Elmet and Tadcaster.
11. The appellant contends that the latest 5-year housing land supply report<sup>2</sup> is flawed because the 20% buffer has been incorrectly applied, it has not accounted for windfall sites and unrealistic assumptions have been made about the deliverability of a number of allocated sites. These comprise: Selby-15, Selby-9, Selby-54, Carlton-1, Carlton-2, Carlton-9, Balby-5, ThorpeW-3 and ThorpeW-9. The appellant is of the opinion that issues relating to the deliverability of these sites would lead to a shortfall of approximately 781 dwellings and that under such circumstances a deliverable 5-year housing land supply of 5.8 years cannot be maintained.
  12. In relation to the buffer, the appellant has suggested that the approach that was taken was not consistent with a number of unspecified appeal decisions and that it was also incorrectly calculated because it was not applied to the basic requirement and the shortfall. However, it is clear from the calculation in Table 5 of the housing land supply report that the 20% buffer was applied to the 'basic requirement' of 2,250 dwellings to give an additional 450 dwellings. Although the shortfall of 389 was then added to the adjusted five year target, this conforms to the approach recommended in a Secretary of State decision that was published at the beginning of 2015 (Ref: APP/R0660/A/13/2209335). In any event, if the buffer were also applied to the shortfall it would only lead to a requirement for an additional 78 dwellings which would amount to no more than 2.5% of the five year target.
  13. In relation to the windfall sites, paragraph 5.9 of the CS states that 'the Council has not made any allowance for future contributions from windfalls in calculating the number of dwellings to be provided through new allocations after taking account of existing commitments' and it goes on to state that 'windfalls are likely to add to the total delivery of homes, in excess of the planned-for target'. Whilst the planned allocations and windfalls were anticipated to exceed 555 dwellings per annum, windfall sites are clearly intended to boost the supply of housing over and above the basic requirement. The role that they have played in practice during the initial plan period is therefore immaterial to the calculation of the 5-year housing land supply. Moreover, I find the number of windfall sites that have come forward merely indicates that the Council was unable to demonstrate a deliverable housing land supply until relatively recently rather than any contrived reliance on such sites.
  14. In relation to the deliverability of sites, the appellant is of the opinion that the planned housing trajectory will not be met because development is unlikely to begin on time either in the next financial year or the one after. A number of issues were identified by the appellant during the course of the Hearing. The first issue related to a need to deliver key infrastructure. This included a bridge across a railway line at Selby-9 and a new link road associated with Selby-15. The second was the presence outline permissions and the likely lag in the submission and approval of reserved matters. This was the case at Selby-54, part of Selby-9, Carlton-1, Carlton-2, Carlton-9 and Barlby-5. The third related to the viability of development and the re-negotiation of affordable

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<sup>2</sup> Selby District Council 5-Year Housing Land Supply Report 2014-2015. Position at 1 October 2015.

housing contributions at Barlby-5, ThorpeW-3 and ThorpeW-9. The fourth issue was a lack of interest from house builders. It was alleged that this affected Selby-54, Selby-9, Carlton-1, Carlton-2, Carlton-9 and Selby-15. This last site had also been allocated for development since 1982.

15. Given the above, it is clear that the greatest risks to the deliverable 5-year housing land supply, as far as the appellant is concerned, relate to sites with outline permission and a lack of developer interest. However, the Council maintains that developers are interested in some sites (Selby-54 and Selby-9) and that a reserved matters application is imminent at Selby-54. According to a recent land availability assessment<sup>3</sup> these sites would account for 1,138 of the allocated dwellings over the plan period. Whilst I accept that the target of 70 dwellings within the present financial year is unlikely to be met at Selby-54, I am satisfied that a phased development that prioritises the housing element of this mixed use site could deliver significant gains in subsequent years. I also accept the lag that will be caused by the need to construct a bridge over the railway line at Selby-9. However, it was clear that approximately 50 dwellings could be constructed in the meantime which would deliver the majority of the target for the next financial year provided reserved matters are progressed in a timely fashion. In terms of the other sites, I do not find any of the issues raised to be insurmountable constraints on the delivery of housing over the next five years despite an, albeit slow, initial pace.
16. Given the above, I conclude that there is no substantiated or robust basis to conclude that the Council does not have a deliverable 5-year housing land supply at this particular point in time. Consequently, the full weight of policies SP2A and SP5 of the CS apply. Given that the site is outside the development limit, the proposal would directly conflict with these policies thus undermining the established settlement hierarchy. As such it would not be in accordance with the development plan.

#### *Character and appearance*

17. I observe from the indicative layout and my site visit that the proposal would lead to a significant and wholly incongruent encroachment of the built form into the open countryside. Whilst I acknowledge the presence of existing development to the west and east, the infilling of the appeal site would have a significant cumulative impact and lead to a substantial spur that would extend beyond the present, clearly delineated boundary of the settlement.
18. I observed that the development to the west comprises a diminutive terrace with a restricted curtilage that appears as an isolated structure in the open countryside rather than an integral part of the settlement. Furthermore, the ribbon development along the western side of Kellington Lane currently forms a compact settlement boundary that would be significantly disrupted by the proposed scheme. Whilst domesticated, the character of the appeal site is nevertheless rural.
19. The appellant contends that the development would be screened by the existing hedgerow and softened by landscaping to be agreed at the reserved matters stage. However, such features are impermanent and cannot be relied upon to mitigate the impact of permanent structures as they can die of natural causes or be removed by future occupants. I acknowledge the existence of a

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<sup>3</sup> Selby District Council 2015 Strategic Housing Land Availability Assessment, June 2015

permission for a commercial fishery (Ref: 2007/0661/FUL) that is yet to be fully implemented. Whilst I accept that this would change the character of the site and lead to a more intensive use, this would not be as harmful as the proposed development.

20. Given the above, I conclude that the proposal would cause significant harm to the character and appearance of the local area contrary to policies SP19 of the CS and ENV1 of the LP. As such it would not be in accordance with the development plan.

### *Sustainability*

21. Paragraph 7 of the Framework advises that there are three dimensions to sustainable development: economic, social and environmental. Whilst it may be possible to deliver positive gains to one of these, this should not be to the detriment of another. 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.
22. The appellant has suggested that social benefits would be derived from the provision of affordable housing. However, this intended social benefit would not have been delivered as a completed obligation was not submitted. Whilst this could have been secured through a negatively-worded condition no exceptional circumstances were present that would have justified such an approach in this particular instance. Despite this, I nevertheless accept that the proposal would be in a sustainable location, make a modest contribution towards the supply of housing, help to support local services and provide employment opportunities during the construction phase. In these respects the proposed development would gain some support from the Framework.
23. However, these benefits must be balanced against any adverse impacts. These comprise the harm that would be caused to the character and appearance of the local area and the creation of new housing at an inappropriate location. Whatever growth option might eventually be applied to Eggborough in the emerging plan, the fact remains that significant growth has already occurred and that the required minimum housing target across DSVs, as a whole, has largely been met. Consequently, the continued expansion of Eggborough would undermine the spatial integrity of the development plan and the ability of the Council to deliver a truly plan-led approach.
24. Given the above and having had regard to the policies of the Framework as a whole, I conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. Consequently, it would not amount to a sustainable form of development and would thus be contrary to paragraph 14 of the Framework.

### *Conclusion*

25. The determinative factors in my decision are that the Council is able to demonstrate a deliverable five-year housing land supply, the proposal would not constitute sustainable development and that material considerations significantly and demonstrably outweigh the benefits of the scheme.

**Conclusion**

26. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Roger Catchpole*

INSPECTOR

Richborough Estates

## APPEARANCES

### FOR THE COUNCIL

Ms R Hardingham MRTPI, Interim Officer

Mr S Eades MSc, Senior Planning Officer

Mr R Welch MPlan MRTPI, Planning Policy Officer

### FOR THE APPELLANT

Ms R Bartlet PGDip URP MRTPI, Planning Consultant

Mr S Thornton, Appellant

## DOCUMENTS SUBMITTED

- S1 Policy SP5 of the Selby District Core Strategy Local Plan 2013 and policy RT2 of the Selby District Local Plan Part 1: General Policies 2005.
- S2 Selby District Council Affordable Housing Supplementary Planning Document, 25 February 2014.
- S3 High Court Judgement: Oxfordshire County Council vs SoS CLG et al. [2015] EWHC 186 (Admin).
- S4 Appeal Decision: APP/N2739/W/15/3136685.
- S5 Selby District Local Plan Authority Monitoring Report, November 2015.

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