



## Appeal Decision

Inquiry held on 17 - 20 and 24 January 2017

Site visits made on 16 and 23 January 2017

by **Richard Schofield BA(Hons) MA MRTPI**

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

Decision date: 13 March 2017

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**Appeal Ref: APP/E2001/W/16/3151699**

**Land off Little Wold Lane, South Cave, East Riding**

- 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 Gladman Developments Ltd against the decision of East Riding of Yorkshire Council.
  - The application Ref DC/14/03376/STOUT/STRAT PP-03624914, dated 20 October 2014, was refused by notice dated 18 December 2015.
  - The development proposed is residential development for up to 119 dwellings with access, landscape, open space and associated works at Land off Little Wold Lane, South Cave, East Riding.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. During the determination of the application, the description of development was amended to '*residential development for up to 82 dwellings with access, landscape, open space and associated works at Land off Little Wold Lane, South Cave, East Riding*'. It is evident that consultation was carried out on this basis and, as such, no-one has been prejudiced by this change. I have, therefore, considered the appeal on the basis of this amended description.
3. Since the issuing of its Decision Notice, the Council has adopted both the East Riding of Yorkshire Local Plan Strategy Document (LPSD) and the East Riding of Yorkshire Local Plan Allocations Document (LPAD). As such, although the Decision Notice refers to the Beverley Borough Local Plan, I have considered the appeal scheme in relation to the adopted development plan.
4. An Illustrative Masterplan was provided with the amended appeal proposal. It is apparent from the appellant's evidence, both written and oral, that it is the result of active consideration, rather than a theoretical exercise in 'how to accommodate X no. dwellings' on the site. It was also common ground between the parties that any reserved matters application should be largely in conformity with the Illustrative Masterplan, to be secured by condition. As such, I give the Illustrative Masterplan considerable weight as a strong indication of how a final scheme would be likely to be laid out.

### Main Issue

5. The main issue is whether, having regard to the requirements of local and national planning policy for the delivery of housing, and the effect of the proposed
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development on the character and appearance of the area, Best and Most Versatile agricultural land and flood risk, the appeal site is an appropriate location for the development proposed.

6. For reasons of clarity, I address the main issue under discrete headings.

## **Reasons**

### ***Housing Land Supply***

7. There was a substantial amount of common ground between the main parties in relation to housing land supply, notably with regard to the overall housing requirement for East Riding over the plan period 1 April 2012 to 31 March 2029. This was recently confirmed in the LPSA as 23,800. A specific statement setting out further agreed positions was submitted at the Inquiry, clarifying that, for the purposes of this appeal a) the five year land supply period was 1 April 2016 to 31 March 2021 b) a shortfall of 2405 dwellings had been accrued since the start of the plan period c) the application of a 20% buffer for persistent under delivery was reasonable d) the use of the 'Sedgefield' method to make up the shortfall was appropriate and, thus, that e) the residual housing requirement for the five year land supply period was 11,285 dwellings (2257 dwellings per annum).
8. On the basis of all that I have read and heard, notwithstanding that I am not entirely persuaded that a period of less than five years is a sufficient time over which to establish persistent under delivery<sup>1</sup>, for the purposes of this Inquiry only I have not departed from these agreed positions.
9. Nonetheless, the supply side of this equation remained in dispute, in relation to lead-in times, build rates, windfalls and some site specific differences, with the effect that the appellant remained of the view that the Council was unable to demonstrate a five-year supply of deliverable housing sites. By the end of the Inquiry the appellant considered the forward supply to be just over four years<sup>2</sup>, with the Council of the view that it was around 5.65 years.

### *Strategic Housing Land Availability Assessment (SHLAA) Working Groups*

10. The Council has established two SHLAA working groups, a Core Group and a Wider Group (of which the appellant is a member), to advise and comment upon the Council's SHLAA methodology, which is the basis for its annual SHLAA update and, thus, its five-year housing land supply assessment.
11. The Core Group is made up of national and local house builders, with the Wider Group comprising a range of other house builders and agents, including the appellant. It was not disputed that it is representative of the developers and other development industry professionals operating in the East Riding.
12. In my judgement the involvement of what appear to be a wide range of locally active developers and others in the production of the Council's SHLAA methodology, and the lack of formal objection from<sup>3</sup> them to it, give it significant weight insofar as its assumptions and parameters are concerned. Notwithstanding that, I consider the disputed matters below.

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<sup>1</sup> This matter is not determinative and, as such, is not pursued further here.

<sup>2</sup> Albeit that the appellant's final analysis did not appear to include around 730 units that were conceded as being deliverable post-discussion on five year supply. Their addition would take the appellant's figure to around 4.3 years.

<sup>3</sup> Notwithstanding the appellant's post-production objection to a range of matters.

### *Lead-in times*

13. The appellant disputes the lead-in times for those local plan allocations without planning permission, which are included in the forward supply, suggesting that an additional six months should be added to allow for pre-application discussions and the preparation of planning applications.
14. The pre-build lead-in times for three types of sites<sup>4</sup> have been considered by the working groups and there is no evidence before me of any formal objection to these lead-in times from the groups in advance of the production of the latest SHLAA.
15. The Council's lead-in times have also been benchmarked, or 'sense tested', against those of comparable local planning authorities in reasonably close proximity. It is evident that the lead-in times adopted by the Council are, in some cases considerably, more cautious than those of the benchmarked authorities. It also evident from the 1 April 2015 SHLAA that the current lead-in times arose following feedback from the relevant working group, and an assessment of (then) recently completed developments, which resulted in six months being added to lead-in times for all three categories of sites.
16. Evidence was presented indicating that of 38 applications approved between 1 April 2016 and 13 December 2016, the average determination time was 10 months, which was in excess of that which is assumed by the Council. This may be so, but this is, in my judgement, a very slim and selective snapshot in time. The Council's more extensive evidence in relation to the determination of applications for local plan allocations indicates a time of around 7-8 months, a figure that is itself extended by some anomalous determination periods for certain applications.
17. The Council has not made an explicit allowance for pre-application discussions or the production of a planning application. Nonetheless, not all developers will want pre-application discussions<sup>5</sup>, or submit two stage applications (i.e. outline followed by reserved matters), and there is no substantive evidence before me to indicate that there is a common period of time required to put a planning application together for the East Riding.
18. The Council has clearly gone to some effort to establish reasonable lead-in times for the three categories of sites included in the SHLAA, which have been supported and informed by locally active developers. As such, on the basis of the evidence before me, I consider them to be justified.

### *Build rates*

19. The sole dispute in relation to build rates concerned sites of 400 or more units, with four developers on site; a category that covers only one site in the SHLAA. The Council has assumed an annual delivery of 140 units, whereas the appellant, on the basis of a report by a national planning consultancy<sup>6</sup> and personal experience<sup>7</sup>, favours a figure of 120 dwellings per annum.
20. The appellant's personal experience is unevidenced and the referenced report is a nationwide, rather than locally or regionally specific, study. The Council's

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<sup>4</sup> Local Plan allocations without planning permission, sites with outline planning permission and sites with reserved matters/full planning permission

<sup>5</sup> It was not disputed that 72 of 120 allocation sites with planning permission did not use the pre-application process and that 59 of the allocated sites with approvals or pending determination were the subject of applications for full planning permission.

<sup>6</sup> *Start to Finish – how quickly do large-scale housing sites deliver?* by NLP (November 2016)

<sup>7</sup> Mr Mowat's Proof para 4.12

assessment is based upon a direct comparison with delivery on a similar site in close proximity, albeit in a neighbouring district, to the allocation site in question. It was not disputed that the comparable site is delivering at a rate considerably above the 140 dwellings per annum assumed by the Council. Thus, I do not consider that the Council's approach to the delivery of the sole allocation site with 400 plus units is unreasonable.

### *Windfalls*

21. The Council's most recent SHLAA increased the contribution that windfalls would make to the forward supply from 400 to 600 dwellings per annum. The evidence before me clearly shows a marked, year on year, increase in windfall approvals for the period 2012/13 to 2015/16, from 582 to 813, giving an average of around 700 dwellings per annum. It was not disputed that, in the current assessment period, from 1 April 2016 to 30 November 2016 almost 600 dwellings have been approved on windfall sites with four months still to run of the assessment year.
22. Set against this is evidence that the number of windfall completions has been declining from a high of 700 in 2012/13 to 461 in 2015/16.
23. The Council's 2016 Draft Methodology Consultation Paper, circulated to its SHLAA working groups for comment, is explicit that the five-year SHLAA windfall allowance is calculated using both historic windfall completion rates and the average number of planning permissions granted on windfall sites over the last five-year period. There is no evidence before me that the working groups found fault with this methodology or have since objected to it.
24. On the basis of the evidence before me, which shows an historic delivery of windfall sites above 400 dwellings per year, and what appears to be a significant pipeline of windfall permissions going forward, the Council's judgement that the increase in the windfall allowance is appropriate can be considered reasonable.
25. The Council has, historically, applied a 15% discount to its windfall supply to account for permissions on garden land. This discount has been removed from the latest SHLAA.
26. The National Planning Policy Framework<sup>8</sup> (the Framework) is clear that any windfall allowance in the forward supply of housing should not include residential gardens. Neither it nor any other policy or guidance documents prescribe, however, any sort of active discounting of supply by local planning authorities to accommodate the Framework's requirement.
27. In addition, the Framework was published in March 2012, since which time the rate of windfall approvals in the East Riding has increased significantly. This suggests that the discount is unnecessary, given that approval rates have risen in a policy environment that is more restrictive than previous national guidance in relation to the development of garden land.
28. Thus, although no clear rationale for the removal of this discount was articulated by the Council, it is not a necessary requirement and there is no reason, beyond an historic tendency on the part of the Council, for it to be retained.

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<sup>8</sup> Paragraph 48

### *Site specific disputes*

29. The appellant disputed the delivery of 75 sites for a range of reasons. A number of these disputes were resolved during the course of the Inquiry, but 60 sites remained contentious. The contention in some instances related to matters that I have addressed above in relation to lead-in times. Nonetheless, 10 sites were the focus of specific discussion. I do not address these further here, as the numerical differences between the parties, amounting to around 878 dwellings, is not determinative given my findings above and below. Indeed, the appellant produced a helpful range of scenarios<sup>9</sup>, one of which demonstrated that were I to find in the Council's favour on windfalls and lead-in times, but not in relation to the 'site specific' factors, the Council would still be able to demonstrate a five-year supply of deliverable housing sites.
30. Of greater significance was the issue of whether the inclusion of allocated sites without planning permission in the forward supply is of itself appropriate i.e. is there, in line with footnote 11 to paragraph 47 of the Framework, '*a realistic prospect that housing will be delivered on the site[s] within five years...*'.
31. My attention was drawn to pertinent authorities in this regard. First, was the so-called Wainhomes judgement<sup>10</sup>. Here, Mr Justice Smith was clear that '*There is no a priori assumption that sites not having planning permission are deliverable*'.<sup>11</sup> He goes on to state, however, that '*inclusion [of sites in an emerging policy document] may be evidence in support of a conclusion that the sites so included are deliverable*', and that once that is accepted, '*there is no reason in principle or on the proper interpretation of Footnote 11 why the fact that sites are included [in an emerging policy document] may not be taken as sufficient evidence that they are deliverable in the absence of evidence (specific or otherwise) that they are not.*'
32. In addition, in the more recent judgement in the so-called St Modwen<sup>12</sup> case, Mr Justice Ouseley stated that, '*The assessment of housing land supply does not require certainty that the housing sites will actually be developed within that period. The planning process cannot deal in such certainties*'<sup>13</sup>. He goes on to state that the focus of the Inspector dealing with the appeal subject to the challenge before him, '*... had to be on deliverability, which was not disproved by showing that there were uncertainties. All this was very much a matter of degree for her*'.
33. The St Modwen case clearly draws a distinction between 'deliverability' and 'delivery'. While this case is itself being challenged it is, for the moment, the up-to-date legal position. It seems to me, therefore, that while the fact of a site's allocation may not be the be-all-and-end-all of that site's deliverability, it is a sound indication of it and, ultimately, a matter for the decision maker's judgement on the basis of the evidence before them.
34. In other words, it is for the decision maker to determine whether a site is deliverable within a given period of time, to the extent that there is a '*realistic prospect that housing will be delivered on the site within five years*'<sup>14</sup>, rather than to establish whether it is beyond doubt that housing will be delivered on site in that time period.

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<sup>9</sup> ID34

<sup>10</sup> Wainhomes (Southwest) Holdings Ltd v SoSCLG [2013] EWHC 597 (Admin)

<sup>11</sup> Ibid paragraph 54

<sup>12</sup> St Modwen Developments Ltd v SSCLG [2016] EWHC 968 (Admin)

<sup>13</sup> Ibid paragraph 51

<sup>14</sup> Footnote 11 to paragraph 47 of the Framework

35. After the close of the Inquiry, the appellant submitted a copy of, and comments upon, the Council's recently published update to its East Riding Housing Site Prospectus (the Prospectus). The Prospectus states that it *'provides prospective developers and investors with information on available sites for housing development in the East Riding'*<sup>15</sup>. It does not appear to provide any information to contradict that which was before me, and discussed, at the Inquiry. The appellant has merely reiterated the point that some of the sites do not yet have a developer attached to them. However, for the reasons given above, I see no reason why this should equate to there being little possibility of delivery in the requisite period.
36. In addition, the Prospectus is said to give some information about a number of sites that were not disputed at the Inquiry. The appellant suggests that I must consider the likelihood of their delivery within the five year period. There is not, however, any detailed new evidence before me in relation to these sites; they remain undisputed (appearing in a section of the appellant's note headed 'Undisputed Sites'); and, as the appellant says, *'it would be inappropriate ... to submit new site specific evidence at this stage'*.<sup>16</sup> Consequently, I do not consider that their presence in the Prospectus has any significant bearing upon my conclusions.

#### *Conclusion on Housing Land Supply*

37. Successive SHLAAs produced by the Council have shown the level of forward supply falling consistently, with the peak delivery period moving further back in the plan period. This does, perhaps, cast a degree of doubt on the accuracy of the Council's projections, but this is not, in my judgement, cause alone to reach a conclusion that there is no five-year housing land supply.
38. There may also, perhaps inevitably, be a degree of non-delivery on some of the disputed sites during the plan period. Nonetheless, in the context of my considerations above, I am satisfied, on the balance of the evidence before me<sup>17</sup>, that it has been demonstrated that there is a reasonable prospect that housing, of the quantum projected by the Council, will be delivered on the disputed sites within five years, particularly given my conclusions in relation to lead-in times and build rates above.
39. This may not remain the case but, for the purposes of this appeal, I conclude that the Council is able to demonstrate a five-year supply of deliverable housing sites.

#### **Local Plan Policy Context**

40. LPSD policy S3 sets out a Settlement Network for East Riding, which seeks to focus development within the development limits (as illustrated on the Policies Map) of specified settlements. South Cave is defined as a Primary Village, on the lowest rung of the Settlement Network, where residential development will be permitted (within development limits) commensurate with its scale, role and character. The appeal site is outside, but adjacent to, the development limits of South Cave and, as such, fails to comply with policy S3.
41. LPSD policy S4 applies to areas outside the settlements listed in policy S3, allowing for development *'to help maintain the vibrancy of Villages and the Countryside'* as

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<sup>15</sup> p.3

<sup>16</sup> Mr Mowatt's note on the Prospectus, para. 3.1.

<sup>17</sup> Which, although not exhaustive, includes recent correspondence from agents and developers; indications of pre-application discussions; planning committee agendas; and evidence of the Council's own track record of delivering sites

long as it meets specific criteria. The appeal site must be considered under section C of policy S4 relating to the Countryside. On a plain reading of the relevant criteria here, the appeal site fails to comply with policy S3. The appeal scheme would provide *'affordable housing for local people'*, but it is not, in my judgement, a tenable argument that an 82 unit market housing led scheme, which happens to deliver some affordable housing, meets this criterion (which is evidently aimed at affordable housing exception schemes).

42. Thus, the appeal proposal conflicts with overarching strategic policies of the LPSD, which seek *'to ensure that the right level of development takes place in the right places'*<sup>18</sup> and which establish how this should occur.

### **Character and Appearance**

43. The East Riding Landscape Character Assessment (LCA) shows the site falling within LCA zone 11b, Intermediate Sloping Farmland, albeit that it was common ground that it is, in effect, a transitional area between zones 11b and 12a (South Western Wolds Sloping Farmland). Pertinent key characteristics of these zones highlighted by the LCA include the sloping landform leading up to the chalk scarp slope of the Wolds; undulating topography between 15m and 60m AOD; and extensive views from elevated land west over the Humberhead Levels. It notes that stone and brick built nucleated villages dispersed across the sloping land are smaller scale than the surrounding open farmland<sup>19</sup>. Reference is also made to mature trees being concentrated around villages<sup>20</sup>.

44. Positive landscape features include villages with a strong sense of place as a result of their vernacular and setting in the rural countryside; views west over the Humberhead Levels; a well wooded appearance and varied landform with enclosed, intimate dales and open elevated farmland above. The *'remote and tranquil landscape that provides a rural backdrop'* to South Cave is also highlighted.

45. In addition, it is notable that the LCA references, in relation to the 11b character zone, the *'development pressure for housing and employment on the edge of the larger settlements'*, which has led to a *'weakening of the rural character in the area'*. It highlights that, *'buildings can detract from the natural landform and vegetation cover where layout does not respect the lay of the land and its character'*<sup>21</sup>.

46. South Cave is situated in something of a 'bowl' at the western end of the Yorkshire Wolds, with the wooded tops of the open scarps of Little Wold Side and Great Wold Side providing attractive and imposing backdrops to it. The village sits relatively comfortably in the landscape, due chiefly to the numerous mature trees situated throughout, which provide a unifying element and serve to contain South Cave's presence within, and to distinguish it from, the much more open, undulating farm land around it. Indeed, even at the time of my winter site visits when many of the trees were bare, their presence and role were very much apparent.

47. The appeal site is comprised of two fields in agricultural and equine use, adjacent to the village. It is largely bare, and slopes up and out into the open countryside. The site is bordered by Little Wold Lane on its western side, with a mature, albeit gappy, hedgerow between the site and the lane. The site's southern boundary is defined by the tree lined South Cave Beck and the rear garden fences of dwellings

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<sup>18</sup> LPSD paragraph 4.14

<sup>19</sup> LCA p.147

<sup>20</sup> Ibid p.148

<sup>21</sup> Ibid p.152

on Shepherd's Well, with a small hedge bound pasture protruding between them. The Yorkshire Wolds Way national trail follows the site's eastern boundary, dropping down from Little Wold Side alongside gappy, newly planted, willow hedgerow.

48. Although relatively level at its southern boundary, the site rises up to form part of Little Wold Side, with its northern boundary defined by the, evidently very well used, public right of way (PROW) running along Little Wold Side from Little Wold Lane. This route becomes part of the national trail. From it there are extensive views across South Cave to the Humberhead Levels. One of the most significant is that across the appeal site, which is open for much of its northern boundary. The importance of these views is underlined by the presence of numerous benches, looking out to the Levels, on this section of path.
49. Overall, the site is an integral and positive part of the village's landscape setting, contributing to the sense of the Wolds countryside sweeping down into South Cave on the wooded valley floor below. Overall, it is clearly distinct from, and stands proud of, the wooded, enclosed village on the valley bottom. As such, it performs an important function as an area of, and allows for a tangible sense of, transition between the higher undeveloped Wold side and the lower lying village. In this context it clearly reflects, and sits within an area which is demonstrative of, relevant characteristics identified in the LCA.
50. The illustrative layout shows dwellings stopping at around the 45 or 46 metre AOD contour, with the aim of containing them to the lower parts of the site. This extent could be fixed by condition. Even so, in my judgement, the impact of the appeal scheme would go beyond the mere change from a green field site to a housing development. The proposed dwellings would not be a natural extension of the village into an area that is well contained within the wider landscape, but the overspill of a substantial block of built development into open and fairly exposed rising countryside. Even if restricted to the contour noted above, which is not an obvious landscape feature on the ground, there would be a considerable foreshortening of the gently sweeping transition from the elevated Wolds ridgeline to an area of low lying residential development.
51. Part of the Shepherd's Well residential development is prominent directly behind the site's western field and has some bearing upon it. Rather than suggesting the site's suitability for housing, however, it forms, in my judgement, a definitive edge to the village. Indeed, I am mindful that it is built upon the site of a former farm yard that formed part of the village, rather than upon formerly open fields.
52. That edge is reasonably harsh, with tall, dense residential development close to the site boundary. Its prominence is inconsistent with the way that the village settles reasonably gently into the landscape elsewhere. As such, I do not consider that it sets any kind of a benchmark of suitability for the development proposed<sup>22</sup>, which would, in my judgement, appear more incongruous. It would be a much wider span of unenclosed built development when viewed from Little Wold Side, presenting an even greater 'unresolved' edge to the village than that presented by the section of Shepherd's Well currently visible.
53. Well-designed residential development should not necessarily need screening. Context, however, is everything and it is clear from the appellant's evidence that green infrastructure would be required to soften or filter the 'interface' between the

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<sup>22</sup> I note that Shepherd's Well was allowed on appeal in 2002 and that the Inspector, clearly, found it to be a satisfactory proposal. He did not, however, have the benefit of seeing the impact of the completed development.



new settlement edge and the Wolds. This would present as patchy tree planting within the proposed community park, in front of, rather than among, the houses. This would not, in my judgement, be effective in tying them back into the treed village, particularly given the extent to which the houses would extend out from the current village edge and, thus, their distance from the treed backdrop some way beyond.

54. The proposed community park would provide a limited transition between the development and the rest of Little Wold Side, which could be aided by 'naturalistic' play equipment and planting. Even so, it would still appear as a managed area and would not provide any particular enhancement over the farmed landscape that exists at present.
55. Wider landscape impacts would be comparatively limited. This would not, in my judgement, lessen the importance of those that would arise and, given the relatively intimate topography of the immediate area, the most significant views of the site are from close quarters.
56. The proposed mitigation planting, notably along the western field's northern boundary, would also have the effect of compromising the extent of the characteristic views, from the PROW running along the site's northern boundary, across to the Humberhead Levels. These views would not be blocked, but they would become constricted and more channelled than at present, to their detriment. The foreground would be dominated by a wide span of residential development, with an estate road in front of it, rather than the open appeal site with the relatively unobtrusive, wooded backdrop of South Cave behind.
57. In addition, the open views from Little Wold Lane across the site, to the top of both Wolds and up the valley between them, would be compromised, diminishing the sense of South Cave's characteristic valley bottom position at their foot. Walkers descending from Little Wold Side, along the well-used national trail into South Cave, would also experience a significant change. The appearance of the village would not come as a surprise, but the harder edge of the proposed development, occupying a substantial proportion of the foreground, would make it a much more suburban view than at present.
58. There is residential development along much of the western side of Little Wold Lane and some of its eastern side. The lane also has street lighting and a pavement. These features diminish the lane's rural character to some degree. Nonetheless, dwellings are reasonably well spaced and are typically set back from the road behind front gardens and mature trees and/or vegetation. This, coupled with the views from the lane, across the appeal site, of the scarps and woodland, mean that it cannot realistically be characterised as 'urban'. Nor will this change significantly once the allocation site on the western side of the lane has been built out, as this will be well contained between the existing bodies of residential development. It will not, therefore, result in a fundamental change to the lane's character and appearance. As such, this context does not weigh particularly in favour of the appeal site's development.
59. There was debate at the Inquiry about whether the appeal site was part of a 'valued landscape', as per the reference in the Framework<sup>23</sup> to such. The appellant had carried out so-called 'Box 5.1'<sup>24</sup> assessments of the site, concluding that it was

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<sup>23</sup> Paragraph 109

<sup>24</sup> Referencing Box 5.1 of the Guidelines for Landscape and Visual Impact Assessment (p.84)

not a valued landscape, whereas the Council was relying on professional judgement alone. In my view, both approaches are reasonable, the Box 5.1 assessment being a useful guide but not a mandatory, or indeed exhaustive, test. That said, I am not convinced that splitting the site in two and applying a discrete Box 5.1 test to each part of it is an appropriate way forward. It is the whole site in the context of its situation that is the issue.

60. The site, as does all of South Cave, lies within the Yorkshire Wolds Important Landscape Area (ILA). It is, therefore, a locally designated landscape. All six ILAs were reviewed, and their boundaries revised as necessary, as recently as 2014 by suitably qualified landscape professionals. The LPSD Inspector endorsed the ILAs and I have no reason to consider that they are not a robust expression of what can only be regarded as locally valued landscapes. As an undeveloped part of one of these ILAs, performing the role and exhibiting the characteristics noted above, I consider that the site is also to be regarded as a valued landscape, as referenced by the Framework.
61. The ILAs are defined by LPSD policy ENV2 and illustrated on the Policies Map. This policy does not restrict development in the ILAs, but does require that it '*... should protect and enhance existing landscape character as defined in the East Riding Landscape Character Assessment ...*'. Similarly, policy A1 (C8) seeks to ensure that development decisions retain the distinctive character and landscape setting of the Wolds villages.
62. The Council has allocated three sites for residential development in South Cave in the LPAD, accepting that some development will need to take place in the ILA. This is interesting, as it is arguable that very few development schemes in the ILA could 'enhance' the ILA if they resulted in the change of a green field site to residential development. Some judgement as to the overall effect of development is therefore required.
63. The allocated sites are markedly different in character and situation to the appeal site. In two instances they are significantly smaller sites, which sit tight to existing development. The third is sandwiched between existing large blocks of residential development, effectively subsuming it into the village, in a much less exposed location than the appeal site. As such, the impact on the ILA of development upon these sites would be far less significant than upon the more prominent and exposed appeal site.
64. A range of other appeal decisions were referenced in relation to residential schemes that have been allowed in the open countryside (including by myself), sometimes in sensitive areas. Even so, these are all contextually different to the appeal proposal, being in different areas of the country with their own particular characteristics. In various instances they feature circumstances where Councils have been unable to demonstrate a five-year supply of deliverable housing sites, which has influenced the ultimate planning judgement. Thus, although green field development will not always be harmful to character and appearance, I do not consider that the referenced decisions set any kind of universal precedent.
65. I conclude, therefore, that the appeal scheme would have an adverse impact upon the character and appearance of the area, of considerably more than the 'minor-moderate' adverse impact alleged by the appellant. The fact that the adverse impact would be upon a small element of a larger ILA is, in my judgement, nothing to the point. The scheme would interfere with characteristic views from popular and well used PROWs across to the Humberhead Levels; compromise the sweep of Little

Wold Side into the village; and result in an overly prominent and hard edged extension to the village in an exposed location, with little attempt to break up the mass of housing with characteristic integral tree cover. The scheme would not protect the existing landscape character or setting of the village, and would certainly not enhance it. As such, the appeal proposal would fail to accord with the requirements of adopted development plan policy noted above.

66. In addition, I consider that the appeal proposal would fail to accord with the Framework's objective for the planning system to protect and enhance valued landscapes.

### **Best and Most Versatile (BMV) Agricultural Land**

67. It is common ground that the appeal proposal would result in the loss of some BMV agricultural land, albeit that there was some dispute over how much would be lost permanently. The appellant argued that the area of the site indicated as being public open space, notwithstanding that it would be guaranteed for recreational use only under the terms of the submitted unilateral undertaking, could be returned to agricultural use after the lifetime of the development had expired. Given that this could be many hundred years, I do not find this argument to be tenable and have assumed the loss of the entire 6.14 hectare site.

68. The only policy in the LPSD that references BMV land is policy S4. Although the appeal proposal would breach other requirements of this policy, section A.3 states that (along with other criteria) development will be supported where it, *'does not involve a significant loss of best and most versatile agricultural land'*. This is reflective of the requirements of paragraph 112 of the Framework.

69. Whether or not 6.14 hectares is a 'significant' area of BMV land is a matter of judgment. It is certainly not a negligible area. However, in this instance I am mindful of the very large proportion of East Riding that is BMV land and the inevitable loss of parts thereof in order to accommodate the area's housing requirement. Thus, in these particular circumstances, I do not consider that LPSD policy would be breached by the loss of the appeal site as BMV land.

70. It is common ground between the main parties that the loss of BMV land would not, of itself, be a reason for refusing planning permission, were the appeal scheme acceptable in all other regards. Even so, there is an ambition in national and local development plan policy to direct new development away from BMV land where possible and it is agreed by the main parties that the loss of BMV land would be, *'... a material consideration which weighs against the grant of planning permission...'*<sup>25</sup>. I have no reason to depart from this view.

### **Flood Risk**

71. In advance of the inquiry the Council, following the submission of additional information by the appellant, stated that it would no longer be pursuing its reason for refusal in relation to flood risk. Nonetheless, the Parish Council maintained its objection on flood risk grounds and it remained a significant issue for local residents.

72. There is no doubt that South Cave suffers from regular, and occasionally severe, flooding. This appears to be due to restrictions on the flow of South Cave Beck, where it has been culverted through certain parts of the village. Nor was it disputed

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<sup>25</sup> ID33

that run-off from the site in its current state can be significant during certain storm events.

73. I am acutely aware of what are well-founded concerns of local residents with regard to flood risk, and its implications for foul drainage, in the village. I do not take them lightly. Nonetheless, none of the local objections raised were from flood risk/drainage professionals and there is no objection to the appeal proposal from those bodies with such professional advisors, namely the Council in its role as local lead flood authority, the Environment Agency<sup>26</sup> and Yorkshire Water. Given the expertise of these bodies with regard to flood risk and/or drainage, and their acceptance that the evidence before them demonstrates that a drainage scheme could be constructed that could, in fact, reduce (and would not increase) the rate of run-off from the site, this is a position to which I must afford considerable weight.
74. There was considerable debate about the presence, or otherwise, of springs on the site. This is relevant insofar as it could influence the nature and efficacy of any drainage scheme. There does not appear to be any doubt that there is at least one spring outside the site, with running water being audible under the manhole cover at the junction of Little Wold Lane and The Stray.
75. Local residents, several of whom have lived on Little Wold Lane for many years and appeared to have an intimate knowledge of the immediate area, remained adamant that there were emergent springs upon the site. Dr Hardwick for the appellant, whose area of expertise is hydrogeology, remained adamant that there were not. In my judgement, given the unfortunate lack of useful empirical evidence derived from exploratory work on site, the evidence remains inconclusive on this matter. However, the Council is satisfied that the matter could be addressed by condition, there was no dispute from any party that *'an engineering solution can always be found'*<sup>27</sup> and, again, I am mindful of the lack of objections from the appropriately qualified statutory bodies. This being so, I am satisfied that the potential presence of emergent springs on the site would be capable of being resolved.
76. In short, therefore, although the appeal proposal would not resolve the current issues in South Cave with regard to flood risk and drainage, neither, in my judgement, would it make them any worse. Indeed, some benefit may arise by reducing the rate of run-off from the site. As such, I do not consider that the appeal scheme conflicts with policy ENV6 of the LPSD, which seeks, among other things, to ensure that new development proactively manages flood risk, such that it does not result in unacceptable consequences to its users, the wider community and the environment.

### **Other Matters**

77. A unilateral undertaking was provided by the appellant, which would secure contributions towards local outdoor recreational facilities and secondary school expansion/enhancements, and the provision and maintenance of on-site public open space. However, it is not necessary for me to address this, given that the appeal proposal is unacceptable for other reasons.
78. The Parish Council maintained an objection in relation to highway safety. However, as I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.

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<sup>26</sup> In relation to its final representations in advance of relinquishing its flood advisory role to the Council

<sup>27</sup> Dr Hardwick's oral evidence

## Conclusion

79. The Council is able to demonstrate a five-year supply of deliverable housing sites and, as such, relevant policies for the supply of housing should be considered up-to-date. It is also common ground that the development plan is neither absent nor silent. As such, full weight is attributable to relevant development plan policies for the supply of housing.
80. I have found that the appeal proposal would be acceptable in flood risk terms. Even so, it would fail to accord with strategic policies for the distribution of housing in the East Riding and would breach those relating to the character and appearance of the area. As such, I consider that the proposal would fail to accord with the development plan when taken as a whole. In addition, although not a factor that is of itself determinative, the scheme would result in the loss of over six hectares of BMV agricultural land.
81. The appellant has suggested that the scheme would provide benefits in relation to the provision of market and affordable housing, biodiversity improvements, public open space and economic contributions during and post-construction. This may be so, but it was common ground between the main parties that in the event that I concluded that the Council was able to demonstrate a five-year supply of housing, and that the proposal was unacceptable in character and appearance terms, such benefits would not outweigh the appeal proposal's conflict with the development plan. I have no reason to disagree with this analysis and consider that there is no weight of material considerations that would justify a decision other than in accordance with the development plan.
82. I conclude, therefore, for the reasons given above, and taking all other matters into consideration, that the appeal site is not an appropriate location for the development proposed and that the appeal should be dismissed.

*Richard Schofield*

INSPECTOR

**APPEARANCES**

*FOR THE COUNCIL:*

Mr Charles Banner of Counsel

Instructed by East Riding of Yorkshire Council

He called:

Mr Mark Steele  
Mr Owen Robinson  
Mr Anthony Devey

Mark Steele Consultants Ltd  
East Riding of Yorkshire Council  
East Riding of Yorkshire Council

*FOR THE APPELLANT:*

Mr Jonathan Easton of Counsel

Instructed by Gladman Developments Ltd

He called:

Dr Paul Hardwick  
Mr Matthew Travis  
Mr Phil Rech  
Mr Richard Mowat  
Miss Diana Richardson

Enzygo Ltd  
Enzygo Ltd  
FPCR Environment & Design Ltd  
Johnson Mowat  
Gladman Developments Ltd

*FOR SOUTH CAVE PARISH COUNCIL:*

Mr David Hickling MRTPI

*INTERESTED PERSONS:*

Mr Julian Taylor  
Mr Andy Leonard  
Mr Geoff Bates  
Mr Robert Munby  
Mrs Pauline Laycock  
Mr Mike Turner  
Dr Peter Ayling  
Mr Simon Leafe  
Mr Peter Cross  
Mrs Fiona Paterson-Choudhary

### **INQUIRY DOCUMENTS SUBMITTED DURING PROCEEDINGS**

1. List of appearances for the appellant
2. List of appearances for the Council
3. Draft Unilateral Undertaking
4. CIL Statement by the Council
5. Rebuttal Proof from Dr Hardwick
6. Rebuttal Proof from Mr Travis
7. Planning Practice Guidance extract on site deliverability
8. Secretary of State's Skeleton Argument in relation to the Court of Appeal St Modwen Developments Ltd v SoSCLG
9. East Riding of Yorkshire Council Planning Committee Report 9 August 2016
10. East Riding of Yorkshire Council Planning Committee Report 7 January 2014
11. West Berkshire District Council v SSCG and HDD Burghfield Common Ltd [2016] EWHC 267 (Admin)
12. South Cave Conservation Area Character Appraisal
13. Appeal decision 1086230
14. East Riding of Yorkshire Council Planning Committee Report for planning application 15/02649/STPLF
15. Opening statement for the appellant
16. Opening statement for the Council
17. Statement by Mr Julian Taylor
18. Statement by Mr Andy Leonard
19. 5YHLS sites pro-forma by the Council
20. Revised planning conditions
21. Note from Mr Steele in relation to the appendices to his Proof of Evidence
22. Top 10 Trail Experiences leaflet
23. 5YHLS Statement of Common Ground
24. Table setting out the Council's record of delivering housing on Council owned sites to date
25. Table setting out delivery of Local Plan allocation sites to date
26. Statement of the Council's position with regard to disputed 5YHLS sites
27. Absence of a five year housing land supply tipping point note
28. SHLAA Table 11 update, March 2015

29. Statement by Mr Simon Leafe
30. Updated CIL Statement by the Council
31. Statement of the parties' respective positions with regard to disputed 5YHLS sites
32. Updated information from the Council with regard to site progress
33. Miss Richardson's Note on Best & Most Versatile Agricultural Land
34. Five Year Supply Scenarios and supporting table
35. Appellant's updated five year supply position
36. Revised draft Unilateral Undertaking
37. Letter from Mr Mowat re disputed sites, 24 January 2017
38. Closing Submissions on behalf of South Cave Parish Council
39. Closing Submissions on behalf of East Riding of Yorkshire Council
40. Closing Submissions on behalf of Gladman Developments Ltd

**INQUIRY DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF PROCEEDINGS**

41. Certified copy of final Unilateral Undertaking
42. East Riding Housing Site Prospectus (February 2017) and appellant's comments on it (3 March 2017).
43. Council's response to 42.