



Appeal Decision

Hearing held on 21 March 2017

Site visit made on 21 March 2017

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date: 5 June 2017

Appeal Ref: APP/G2713/W/16/3155159

Primrose Hill, Dalton, North Yorkshire YO7 3HD

- 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 David Holmes (dh Land Strategy) against the decision of Hambleton District Council.
 - The application Ref 16/00480/OUT, dated 25 February 2016, was refused by notice dated 9 May 2016.
 - The development proposed is a residential development of 17 dwellings, with 40% being affordables, totalling 7 affordables and 10 open market.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline with all matters reserved for future determination other than access. I have dealt with the appeal on that basis, and have treated the accompanying drawings as illustrative.
3. The Council's refusal was based on five reasons for refusal (RRs), of which RR No 3 relates to the loss of best and most versatile agricultural land, and No 5 to the absence of a planning obligation to provide appropriate levels of affordable housing.
4. At the hearing I received a signed copy of the Statement of Common Ground (SoCG) in which, amongst other matters, the Council stated it no longer wished to pursue RR No 3. In response to my request for an agreed position relating to housing supply matters, I also was given a signed Supplement to the SoCG (Supp SoCG). As part of this Supp SoCG both main parties agreed that it would be possible to overcome RR No 5 through the use of an appropriately worded condition. However, the use of this mechanism to provide affordable housing is not supported by Planning Practice Guidance¹. Consequently, at my request, following consideration by the Council, a signed and dated unilateral obligation was provided by the appellant after the close of the hearing, which I consider below.
5. Following the refusal of the application before me, outline planning permission for a development of five dwellings (16/01933/OUT), with all matters reserved

¹ Planning Practice Guidance Paragraph: 010 Reference ID:21a-011-20140306

other than access, has been granted on part of the site closest to Harriers Croft. This decision was made against officer recommendation. A further outline application for seven dwellings on the remainder of the site has been refused (16/02691/OUT).

6. There is no dispute between the main parties that access to the site could be satisfactorily achieved. During the hearing, drawing no. NEA1441-001 was submitted. This provides a detailed illustration of the proposed access to the site. As this is at the same location, as shown on the plan originally submitted with the application, I do not consider that any party would be prejudiced by my accepting it.
7. During the hearing I was provided with a corrected version of the list of draft conditions. In addition, in response to evidence provided by an interested party which had not been considered within the Council's officer's report, the Council in consultation with the appellant, tabled an additional condition. This would require a survey to be undertaken for Great Crested Newts, and, if found necessary, suitable mitigation measures undertaken prior to development on the site.

Main Issues

8. From what I have seen, read and heard I consider the main issues in this appeal are: a) whether the Council is able to identify a five year supply of deliverable housing land; b) whether the proposed development would be consistent with the settlement strategy of the development plan; c) the effect of the proposed development on the character and appearance of the wider area; d) whether the proposed development would increase flood risk elsewhere; and e) whether the proposed residential development would constrain future agricultural use of the nearby former poultry sheds, or intensification of the existing use, and provide acceptable living conditions for future occupants.

Reasons

Housing supply

9. Both main parties accept that the level of housing proposed within the Hambleton Core Strategy (CS), adopted 2007, is not consistent with the Framework as it is based on artificially constrained figures derived from the Regional Spatial Strategy. As such, alternative figures for Objectively Assessed Need (OAN) within the district are set out within the Supp SoCG. These range from a figure of 320 dwellings per annum (dpa) promoted by the Council, to 430 dpa, which I understand from the Supp SoCG, to be a figure generally advocated by the development industry as being reasonable.
10. The two main parties differ as to whether the buffer should be set at 5% or 20%. These alternative approaches translate to a requirement of 337 dpa and 541 dpa respectively. Whilst there is clearly a substantial difference in the requirements, taking the appellant's worst case scenario, which involves discounting a number of sites from the five year supply, the Council would only just fail to provide a five year supply of deliverable housing at a figure of 4.9 years. At the hearing, the appellant confirmed that this calculation would, if taken to two decimal points, result in a supply of 4.98 years. In my judgement this figure could legitimately be rounded up to five years. When the appellant

includes the disputed sites the supply position equates to 5.3 years. Therefore, in either case, to my mind, the calculation suggests that there is a demonstrable five year supply of deliverable housing, albeit, the use of the higher OAN figure and the 20% buffer, results in a supply which is at the margins of, but meets, the requirement. The Council takes a more optimistic approach. It considers that it has 8.5 years supply of deliverable housing when a 5% buffer is applied. This reduces to 7.5 years if a 20% buffer is utilised.

11. For the purposes of this appeal, even were I to accept the appellant's case relating to the level at which the OAN requirement should be set, and the rate at which the buffer should be applied, it appears that the Council can provide a five year supply of deliverable housing. At the hearing, I was informed by the appellant that the securing of significant infrastructure funding from the Local Enterprise Partnership was in doubt, and if it was not forthcoming, it would impact on the substantial transport infrastructure required to unlock strategic housing developments at North Northallerton. However, I have not been provided with any substantive evidence to suggest that the delivery of the developments, within the five year period, is in doubt. As such, this has not impacted on my consideration of whether the Council can demonstrate a five year supply.
12. Consequently, as the most pessimistic scenario where a number of sites are discounted reveals a supply of marginally under five years, which would reasonably be rounded up to five years, and that the Council's calculations suggest a 7.5 year supply utilising a 20% buffer, I conclude, for the purposes of this appeal, that the Council are able to demonstrate a five year supply of deliverable housing sites. I am aware in doing so, that in the past, Inspectors have concluded differently, however, I have considered this matter in the context of the evidence before me.
13. Having come to this conclusion, in the context of the requirement for a five year supply of deliverable housing as set out in paragraph 49 of the Framework, the relevant policies for the supply of housing are to be considered to be up-to-date. As such, the presumption in favour of sustainable development as set out in the fourth bullet point of paragraph 14 of the Framework is not engaged in relation to policies for the supply of housing.

Development strategy

14. S38 (6) of the Planning and Compulsory Purchase Act and Paragraph 2 of the Framework is clear that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for Hambleton consists of the Hambleton Core Strategy (CS), adopted in 2007, the Development Policies (DP), adopted 2008 and the Allocations Plan (AP), adopted 2010. The review of the development plan is at an early stage.
15. The settlement strategy for Hambleton is set out in the policies of the CS. Policies CP1 and CP2 of the CS provide high level principles of development to guide the distribution of development. Whilst these policies predate the publication of the Framework I consider these generic policies to be broadly consistent with its objectives, as such I accord them significant weight. Policy CP4 of the CS sets out a settlement hierarchy where development of an appropriate scale and nature is supported within the development limits of the settlements. Dalton is defined as a Secondary Village. This is at the lowest

level of the defined settlement hierarchy where small scale limited infill, redevelopment and conversions would be appropriate. Policy CP6 of the CS provides for, in exceptional circumstances, the allocation of sites for housing in the lower tier villages. In the case of Dalton, the former turkey factory site was allocated for development, and the first phase has been completed with a further phase of 43 units on site. Outside of the settlements, development will only be permitted where an exceptional case can be made in terms of the principles of the location of development, and where one or more of a list of criteria is satisfied, and where there should be no conflict with the environmental protection and nature conservation policies of the Plan. As the proposed development does not provide for 100% affordable housing, nor does it meet any of the criteria set out in CP4, the proposed development of a mix of affordable and market housing outside the settlement boundary would be contrary to Policies CP4, CP6 and CP9 of the CS and DP9 of the DP.

16. I note that both main parties agree that the level of housing required in Hambleton and the strategic approach identified in the CS was consistent with the revoked Regional Spatial Strategy (RSS) which artificially constrained the level of development in Hambleton. Nonetheless, the approach of determining the appropriate scale and location of development through the development plan, and, as a flip side, restricting development which does not accord with the policies of the development plan, is consistent with the Framework which states that the planning system should be plan-led. Therefore, as I have already concluded that the Council is able to demonstrate a five year supply of deliverable housing, whether defined by the Council or the requirement put forward by the appellant, I accord significant weight to the settlement boundary, hierarchy, and development limits for the village of Dalton as illustrated on the Policies Map of the AP together with Policies CP4, CP6 and CP9 of the CS, and Policy DP9 of the DP, which set out the circumstances in which development will be acceptable outside the settlement limits.
17. Following the publication of the Framework, the Council adopted an Interim Policy Guidance (IPG) in 2015. However, whilst it has been subject to public consultation it does not enjoy the statutory status of a development plan. As such, I consider it to be a material consideration.
18. As part of the IPG, the Settlement Hierarchy was reviewed. Dalton retained its status as a Secondary Village which is considered to be a 'sustainable settlement'. From my site visit I observed that the village boasts a pub, sports facilities, a vehicle repair garage, village hall, a small village shop and sub post office, church and village hall, and there is a regular bus service readily accessible from the appeal site. However, in reality, residents are for the most part, dependent on facilities outside of the village.
19. In addition, a more permissive approach to development outside of settlement boundaries was promoted; stating that small scale development that results in organic and incremental growth will be supported. Small scale was defined as normally up to five units. However, each case was to be taken on its merits.
20. In the context of my conclusion relating to the ability of the Council to demonstrate a five year supply of housing I accord this policy document limited weight. I observed on my site visit that there have been a number of modern developments within the village of a similar scale. Therefore, even were I to give it greater weight, in conjunction with the development which has already

taken place, I do not consider that the scale of development before me, which would extend the village outside of the settlement limits would provide for the organic or incremental growth envisaged by the IPG. Nor would it be consistent with the village's position within the settlement strategy where development of a small scale is considered to be appropriate.

21. Consequently, I conclude that the proposed development would be contrary to Policies CP4, CP6 and CP9 of the CS, and Policy DP9 of the DP, and the IPG.

Character and appearance of the wider area

22. The appeal site is a flat area of open grazing land which for the most part is surrounded by low hedging, with four standard trees at the southern boundary and a modest tree within the hedging at the north. To the north of the appeal site is the modern Harriers Croft development which lies within the settlement boundary. A number of properties within Harriers Croft front an attractive predominantly unmade track which, together with Primrose Hill, provides the northern boundary of the appeal site and is clearly rural in nature. The housing which fronts Harriers Croft and the mix of modern and older properties along Primrose Hill and Pit Ings Lane, form a recognisable built up edge to the countryside. This is in contrast to the bungalow and outbuildings at Larks Edge to the west of the site, and the converted former poultry buildings which are used for self-storage but retain their agricultural appearance and are in keeping with the rural landscape and open countryside. Fren-Dene, is a traditional brick built bungalow, located at the eastern end of the appeal site. It is the only dwelling to the west of Pit Ings Lane and appears visually separate from the rest of the village. Rose Cottage lies opposite the bungalow and its curtilage forms the edge of the settlement boundary. To the south, the flat open landscape of which the appeal site forms a part extends into the open countryside, with a band of trees on the horizon.
23. I note that the appellant has offered to be flexible as to the design and house type of development, including the building of bungalows. However, detailed matters of landscaping, scale, appearance and layout are not before me. I accept that from what I have seen that the scale of development is similar to that which has taken place in the past within Dalton. Nonetheless, whilst I note that permission has been granted in outline for five dwellings on the northern part of the site (16/01933/OUT), I consider that the construction of 17 dwellings on the appeal site would result in an unacceptable encroachment into the open countryside and would have a further urbanising impact on the village which has already seen substantial growth within its defined development limits.
24. As part of my site visit I was able to observe that the footpath which extends into the countryside from Pit Ings Lane, together with the unmade track to the north of the appeal site, is part of a loop, frequented by dog walkers. In the case of Harriers Croft, the existing hedgerow and trees provide a recognisable boundary to the settlement and delineate a change in character.
25. In conclusion, the proposed development would not be contained by existing development, and would not appear as infill development as it falls within an area of grazing land which is recognisably part of the open countryside which extends to the south and west and would be highly visible when viewed from the public footpath to the east and the track to the north. As such, it would

have a detrimental impact on the character of the wider area and would be contrary to Policies CP1, and CP16 of the CS and Policy DP30 of the DP.

Flood risk

26. The whole of the appeal site lies within Flood Risk Zone 1 and is itself not at risk of flooding. However, the wider area has been subject to flooding with recent significant recorded instances of flooding at Pit Ings Lane which gives vehicular access to the site.
27. Paragraph 103 of the Framework is clear that flood risk should not be increased elsewhere as a result of development. The cumulative impact of new and future large scale developments on the drainage network is a matter for the Local Plan Review. However, having considered the evidence before me, including correspondence from both Yorkshire Water and the Swale and Ure Drainage Board, subject to the imposition of appropriate detailed conditions, including measures to control discharge rates, there is no technical evidence before me to suggest that the proposed development would increase the risk of flooding elsewhere. Moreover, it would be possible to condition the provision of effective, resilient, emergency access routes.
28. As such the proposed development, subject to conditions, would be consistent with Policy CP21 of the CS, and Policy DP43 of the DP, which require development to both provide for protection from, and not worsen instances of flooding.

Former poultry sheds

29. The former poultry sheds to the west of the proposed development are used for, and benefit from planning permission for B8 storage, granted on appeal (APP/Y2713/A/08/2082891).
30. I note that the proposed development would bring housing closer to the site and that there is the possibility that the existing buildings could be used for the rearing of poultry in the future. However, as there is an established business operating from the site, with no evidence before me, of a realistic likelihood that the buildings would revert to their original use, or that the current use within the current buildings would be intensified to such an extent as to cause harm through noise or disturbance, neither the living conditions of future occupants of the proposed development, nor the enterprise operating from the former poultry buildings would be prejudiced by the proposed development, as a result of incompatibility.
31. Consequently, the proximity of the proposed development to the former poultry sheds does not weigh against the proposal, and would accord with Policies CP1, CP15, CP21 of the CS, and Policies DP1 of the DP, which of the policies to which I have been referred are the most relevant, and which require that both the living conditions of residents and the future of rural businesses are protected.

Other matters

32. I note that two letters of support have been received however, for the reasons set out above these do not raise matters that would overcome or outweigh my concerns set out above.

33. I have carefully considered the planning obligation which was submitted by the appellant following the closure of the hearing. I can confirm that the proposed contribution to provide 41% affordable housing, which would exceed the 40% requirement set out within Policy CP9, is necessary, related directly to the development and fairly related in scale and kind. As such, it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.

Overall Planning Balance and Conclusion

34. Paragraph 14 of the Framework states that the presumption in favour of sustainable development should be seen as the golden thread running through both plan making and decision taking. For decision-taking this means approving development proposals that accord with the development plan without delay.
35. I have concluded that the proposed development would not increase flood risk elsewhere, nor would it constrain future activities within the nearby former poultry sheds, nor would future residents' living conditions be potentially compromised. However, I have concluded that the proposed development which would be outside of the development limits would be contrary to the settlement strategy of the development plan and would have an adverse impact on the character and appearance of the wider area. The development plan is the starting point for decision making and where a proposed development conflicts with the development plan it should be refused unless other material considerations indicate otherwise.
36. In this case, there is nothing before me to suggest that the policies of the development plan are out-of-date, absent or silent. Consequently, I accord full weight to the relevant policies of the plan.
37. The proposed development would provide a mix of housing types, and would provide additional market and affordable housing. However, in the context of a five year supply of deliverable housing I attach little weight to the delivery of the market housing within five years of my decision, and moderate weight to the social benefit of the associated affordable housing.
38. I note that the housing would be located close to the village facilities and that the rural location with its ready access to walks and the local sports facilities would provide the opportunity for health giving exercise. Nonetheless, as these benefits may be accrued elsewhere on sites which accord with the development plan, I accord these benefits minimal weight.
39. I have been referred to the economic benefits to be derived from the construction of the housing, and the economic benefit of the support to local businesses and the local economy through increased custom from both those employed in construction, and future residents, as well as access to nearby jobs. In addition, I have taken into account increased revenues to the Council from New Homes Bonus and taxes. I accord these benefits moderate weight.
40. The appeal site is of limited biodiversity value and environmental value. However, in the context of the loss of open grazing land I accord minimal weight to the potential for the gardens associated with the proposed housing, to encourage flora and fauna.

41. Moreover, whilst the Council may in the future have a requirement to allocate further green field land for development, the decision as to where new housing should be provided, taking into account access to job opportunities such as those at the nearby Dalton Industrial Estate is a matter to be considered through the review of the development plan, as such I accord this, together with the Sustainability Appraisal produced by the appellant no weight in my consideration of the appeal before me.
42. I have been referred to a number of appeal decisions, the extant planning permission for five bungalows on the site, and a legal judgement. However, whilst I have considered these carefully, I have determined the particular circumstances of the appeal before me in line with S38(6) of the Planning and Compulsory Purchase Act 2004 which requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
43. I consider that the proposed development would be contrary to the development plan as a whole, and that the material considerations in favour are not of such weight to indicate that the development should be allowed. In sum, it would not result in sustainable development.
44. For these reasons, the appeal should be dismissed.

L. Nurser

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Ms Kathryn Jukes BA (Hons)	Directions Planning Consultancy
Dip TP MRTPI	
David Holmes	Dh Land Strategy

FOR THE LOCAL PLANNING AUTHORITY:

Tim Wood	Development Manager, Planning Team, Hambleton District Council (HDC)
Fred Pippet MRTPI	Information Management Officer HDC
Laura Chambers	Senior Planning Officer HDC

DOCUMENTS

- 1 Signed Statement of Common Ground
- 2 Signed Supplement to the Statement of Common Ground
- 3 Corrected version of list of conditions
- 4 Additional draft condition relating to Great Crested Newts

PLANS

- 1 Site accessibility and visibility splays NEA 1441-001

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