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# Appeal Decision

Site visit made on 27 September 2017

**by I Jenkins BSc CEng MICE MCIWEM**

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

**Decision date: 18 December 2017**

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**Appeal Ref: APP/E2734/W/17/3176152**

**Harrogate College, Hornbeam Park Avenue, Harrogate, HG2 8QT**

- 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 Harrogate College against the decision of Harrogate Borough Council.
  - The application Ref 16/01739/OUTMAJ, dated 29 April 2016, was refused by notice dated 21 November 2016.
  - The proposed development is described as a hybrid planning application seeking outline planning permission for up to 89 dwellings (with all matters reserved except for access) and detailed permission for an all-weather sports pitch with associated access, car parking, open space, landscaping, drainage infrastructure and demolition of buildings.
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## Decision

1. The appeal is dismissed.

## Procedural matters

2. The hybrid planning application subject of this appeal comprises 2 elements: outline planning permission for up to 89 dwellings, with all detailed matters except access reserved for future consideration; and, detailed planning permission for an all-weather sports pitch (AWP) with associated facilities.
3. In its Appeal Statement, the Council has confirmed the withdrawal of its refusal reason No. 1, relating to air quality. I have taken this into account. In support of the proposal, the appellant has submitted a unilateral undertaking (UU) pursuant to section 106 of *The Town and Country Planning Act, 1990*, which I have also taken into account.

## Main Issues

4. I consider that the main issues in this case are: the effect of the proposed all weather pitch (AWP) on the character and appearance of the area, with particular reference to the Crimple Valley Special Landscape Area and Hookstone Valley Green Wedge; and, whether the appeal scheme would make adequate provision for infrastructure needs arising from the proposed residential development, with particular reference to educational facilities.

## Reasons

### ***The effect of the proposed AWP on character and appearance***

5. The appeal site comprises 2 discrete elements. The proposed housing site (PHS) is a broadly rectangular area whose northwestern boundary fronts onto
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Hookstone Road and its southwestern boundary adjoins Hornbeam Park Avenue. The group of buildings that front onto Hornbeam Park Avenue immediately to the southeast of this area of the appeal site form part of the Harrogate College campus. The site of the proposed AWP (AWPS) is situated to the northeast of that group of college buildings. Both areas of the appeal site are identified as existing recreational open space on the Proposals Map of the *Harrogate District Local Plan, 2001* (LP). With the exception of a short section at its northwestern end, the northeastern boundary of the appeal site adjoins an area of land which is designated on the LP Proposals Map as part of the Crimple Valley Special Landscape Area (CVSLA) and Hookstone Valley Green Wedge (HVGW). To the southeast of the AWPS and the adjacent college campus is development that forms part of the Hornbeam Park Business Park.

6. The proposed AWP, which would have a playing surface around 73 metres by 46 metres and a run-off area approximately 3 metres wide around its perimeter, would be enclosed by fencing up to 4.5 metres high. 4 no. floodlights, around 15 metres high, would be located in its corners. The appellant has indicated that the AWP and associated floodlighting would not be used outside of the hours of 0800 to 2100 Monday to Sunday; a limitation which could be ensured through the imposition of a suitable condition. My assessment is based on the assumption that the AWP would be constructed at a ground level comparable to the existing adjacent car parking area to the southwest, a matter which could also be controlled by condition.
7. The Council's appeal statement indicates that it is in receipt of an outline planning application Ref. 17/03262/FUL for residential development of up to 130 dwellings on land to the north east of the appeal site, within the CVSLA and HBGW. However, as there is no certainty that permission will be granted or that it would proceed, I give it little weight.
8. LP Policy C9 indicates that the Council will give long term protection to the high quality landscape of the CVSLA. Within that area new development which would have an adverse impact on the character of the landscape or the landscape setting of Harrogate will not be permitted. LP Policy C10 indicates that long term protection will also be given to the HVGW. In particular, within that area development will not be permitted where it would adversely affect the character of the Green Wedge. However, the appeal site is not within either of these designated areas. I consider therefore, that it would not have an impact on the character of the landscape within those areas and so would not conflict with LP Policies C9 or C10 or the Framework as regards the aim of protecting valued landscapes.
9. The reasoned justification for LP Policy C9 identifies that LP Policy C2 applies to countryside outside the Special Landscape Areas of importance to the landscape setting of Harrogate. LP Policy C2 indicates that development should protect existing landscape character. The Council's Supplementary Planning Guidance-*The Harrogate District Landscape Character Assessment, February 2004* (HDLCA), identifies that it will be used to implement LP Policy C2. It describes areas of distinct landscape character within the District and provides guidelines to help manage landscape change. However, the Council has confirmed that the appeal site does not fall within any of the character areas identified by the HDCLA and that instead it falls within the built up area of Harrogate.

10. Consistent with LP Policy HD20, Policy SG4 of the *Harrogate District Core Strategy, 2009* (CS) identifies that development should: be well integrated with, and complimentary to, the spatial qualities of the local area; and, be appropriate to landscape character. Furthermore, visual amenity should be protected and where possible enhanced. CS Policy EQ2 indicates that, subject to the District's need to plan for new greenfield development, the landscape character of the whole District will be protected and where appropriate enhanced. LP Policy R1 confirms that any loss of recreation land will not be permitted where this involves the loss of open space of amenity value harmful to the character of the area.
11. As I have indicated, the proposed AWP would be constructed on an area of the Harrogate College campus identified as existing recreational open space, which has been used for sports in the past. In my judgement, the noise environment potentially associated with past and proposed future uses would be unlikely to be materially different. I acknowledge that the proposed development would be visible from public rights of way within the CVSLA and HVGW and so would affect their setting. However, from those vantage points the proposal would be seen against the nearby backdrop of a number of existing buildings, including the wide rear elevation of a 5 storey college building. Furthermore, the appellant has indicated that College opening hours extend to 9 pm on weekdays, with associated internal lighting and external street lighting. Although the proposed floodlights may be brighter in relative terms, they would be small in number. I consider that in this context, the relatively small scale, fenced AWP with 4 slender lighting columns would not appear out of place or obtrusive. In my judgement, it would not harm the setting of the neighbouring designated landscapes or more generally the character or appearance of the area. Although the extent of new planting within the site, which could be secured by condition, would be likely to be limited by space constraints, it would further reduce any visual impact of the AWP, albeit to a small degree in all likelihood.
12. I conclude that the effect of the proposed AWP on the character and appearance of the area, with particular reference to the CVSLA and HVGW, would be acceptable and it would not conflict with the aims of CS Policies EQ2 and SG4 or LP Policies C2, HD20 and R1 or C9 and C10. In the event that the level of the playing surface were to be lowered below the ground level of the existing adjacent car parking area, this would be likely to limit the visual impact of the AWP to a greater extent.

### ***Infrastructure***

13. In its consultation response to the planning application, North Yorkshire County Council sets out its assessment, which has not been disputed, that additional primary education facilities would need to be provided in the area in order to meet the demands likely to be associated with future residents of the proposed residential development. It calculates that, based on the proposal of up to 89 dwellings, a financial contribution of around £180,000 would be required in order to make adequate provision for those facilities, whilst acknowledging that this may need to be recalculated when the final number and size of dwellings are established with the approval of reserved matters. Based on the evidence presented, I am satisfied that such a contribution would be: necessary in order to make the development acceptable in planning terms; directly related to the

development; and, fairly and reasonably related in scale and kind to the development.

14. Notwithstanding the appellant's Statement of Case indicates that mitigation provided by the scheme for impacts on community facilities would include a financial contribution towards education provision, secured by a section 106 legal agreement, the UU provided by the appellant does not include provision for an educational contribution. For its part, the Council has suggested that a negatively worded condition could be used to secure adequate provision of school facilities. The suggested condition would require: the appellant to submit details of arrangements for the provision of improved educational facilities in the locality to serve future residents and details of the timescale for the provision of such facilities; and, thereafter, the measures to be carried out in accordance with the approved scheme. Based on the evidence presented, in my judgement, the arrangements are likely to necessitate the provision of a planning obligation to secure the financial contribution identified as necessary by North Yorkshire County Council.
15. The national *Planning Practice Guidance* (PPG) states that *'a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed... and is important in the interests of maintaining transparency'*. Whilst the PPG indicates that in exceptional circumstances such an approach may be appropriate in the case of more complex and strategically important development, in my view, the appeal scheme does not fit that profile. I consider that the use, as suggested by the Council, of a condition to secure the necessary financial contribution would not be appropriate.
16. I conclude that the appeal scheme would not make adequate provision for infrastructure needs arising from the proposed residential development, with particular reference to educational facilities. In this respect the appeal scheme would conflict with the aims of CS Policy C1 and the Framework, insofar as they indicate that proposals will be expected to provide for and/or contribute towards the provision of community and other infrastructure needs generated directly by the development where this is necessary to make the development acceptable in planning terms. In my judgement, this matter weighs very heavily against the grant of planning permission for the proposed residential development.

### **Other matters**

#### *Safety and convenience of highway users*

17. The proposed housing development would be accessed off the section of Hookstone Road between its junction with Hornbeam Crescent, to the northeast, and its signalised junction with Hornbeam Park Avenue/Rayleigh Road (HPARR), to the southwest. A number of interested parties have raised the concern that traffic associated with the proposed development would harm the safety and convenience of highway users, by, amongst other things, adding to congestion. The Framework, whilst seeking to ensure the provision of safe and suitable access to development sites, indicates that development should

only be refused on transport grounds where the residual cumulative impacts of development are severe.

18. In support of the proposal, the appellant has submitted a *Transport Assessment, April 2016*, by Curtins Consulting Limited. It includes junction modelling results which indicate that, although there is some queuing at local signalised junctions during the AM and PM peak hours, the junctions operate below or slightly above practical capacity. That position is also consistent with my own observations of existing AM peak hour conditions, made during my site visit. Furthermore, the modelling predicts that the impact of the proposed development on junction operation would be minimal. I have not been provided with any compelling evidence to the contrary. In addition, I saw that traffic conditions in the vicinity of the proposed appeal site entrance were reasonably well mannered. For example, drivers queuing in a southwesterly direction up to the HPARR junction were willing to allow others to join the lane from Hornbeam Crescent, maintaining traffic movement on that side road. I consider that the same would be likely to apply to traffic emerging from the proposed accessway onto the highway.
19. The application plans indicate that the southwest bound lane of Hookstone Road adjacent to the entrance to the site would have yellow criss-cross markings, indicating that it should be kept clear. This would provide adequate visibility for drivers emerging from the site in a northeasterly direction to check that others are not approaching along the highway from the southwest, thereby avoiding conflicting vehicle movements. The distance between the proposed PHS entrance and Hornbeam Crescent is likely to be sufficient to ensure that emerging drivers do not come directly into conflict with one another.
20. I conclude that the proposal would be unlikely to harm the safety or convenience of highway users and in this respect would accord with the aims of the Framework.

#### *Air quality*

21. The Council's first reason for refusal, although since withdrawn, echoed concerns raised by a number of interested parties. It indicated that *'the traffic generated by the development would increase traffic movements through the A661 Wetherby Road/Hookstone Road (Woodlands) junction which is to be designated an Air Quality Management Area (AQMA) and would thereby increase the levels of air pollution within this area, thereby harming residential amenity....Such planning harm significantly and demonstrably outweighs the wider benefits of the development.'*
22. The Framework seeks to prevent both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of air pollution. To prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health or general amenity should be taken into account.
23. In its appeal statement the Council has confirmed that whilst it intends to declare an Air Quality Management Area at the Woodlands junction, where it has identified an exceedance of an air quality objective, it had not yet been formally designated. When making its appeal, the appellant submitted an *Air*

*Quality Assessment, May 2017 (AQA)*, produced by Resource and Environmental Consultants Limited to address concerns raised regarding air quality. It concluded that predicted impacts on NO<sub>2</sub> and PM<sub>10</sub> concentrations as a result of the proposed development would be negligible at all sensitive receptor locations in the vicinity of the junction. The overall significance of potential impacts was determined to be not significant.

24. The Council has confirmed that it took external advice regarding the AQA conclusions, which indicated that significant harm arising from development traffic to air quality at the junction could not be demonstrated and that the effect at sensitive receptor locations would be no worse than slight. I have not been provided with any compelling evidence to the contrary.
25. Furthermore, the applicant has committed, through a formally completed planning obligation, to provide a financial contribution of £200,000 towards assessment work, design, land acquisition and legal fees undertaken/incurred by the Highway Authority to develop highway capacity improvements surrounding Woodlands junction. In addition, a contribution of £10,000 would be provided towards upgrading local cycle infrastructure, thereby encouraging modal shift away from vehicles. These contributions have the potential to facilitate a reduction in congestion and associated air quality impacts.
26. I conclude on balance, with particular reference to potential effects on health and general amenity, that the proposal would be unlikely to result in existing development either being put at unacceptable risk from, or being adversely affected by unacceptable levels of air pollution. I consider overall, that the likely effect of the scheme on air quality can be regarded as insignificant.

#### *Harrogate Conservation Area*

27. The appeal site is separated from the Harrogate Conservation Area by Hookstone Road. Neighbouring development within the Conservation Area is characterised by housing set back from the highway beyond garden areas. The primary public vantage point from which it is seen is from Hookstone Road and those views would not be affected by the proposal.
28. The illustrative landscape parameters plan envisages: 3-storey development along the southwestern side of the PHS, in response to the 3-storey hotel development that fronts onto the opposite side of Hornbeam Park Avenue and the 3-5 storey development within the adjacent college campus; 2-storey development to the centre of the site and along Hookstone Road, in keeping with the scale of development in the neighbouring section of the Harrogate Conservation Area; and, public open space to the northeastern side of the site.
29. I consider that the proposed housing development, which would be keeping with the character and appearance of neighbouring development, would not harm the setting of the Conservation Area or its significance, consistent with the aims of the Framework.

#### *Loss of potential employment land*

30. I have had regard to the concerns raised by a number of interested parties regarding the potential future value of the PHS as employment land or space for expansion of the college. Given that the college is promoting the appeal scheme, it appears unlikely that the land is crucial to any future development plans it may have for the education facility and so I give the latter concern little

weight. I understand that the PHS is 1 of 2 Harrogate town draft employment land allocations included within the emerging *Harrogate District Draft Local Plan 2016* (HDDLPL). Furthermore, the *HDDLPL Additional Sites Consultation Document, July 2017* confirms that additional allocations are likely to be required for both housing and employment needs over and above those contained within the HDDLPL at present. However, the Council has confirmed that its allocation of the PHS for employment land should be given no weight as its emerging plan is at such an early stage towards adoption. Under these circumstances, I give little weight to the potential future value of the PHS as employment land, as opposed to housing land.

#### *Sporting facilities*

31. As I have indicated, both areas of the appeal site are identified as existing recreational open space on the LP Proposals Map and a number of interested parties have expressed concerns regarding the loss of those facilities resulting from the development proposal. I understand that those areas of recreational open space have been used as sports pitches in the past. LP Policy R1 indicates that development proposals which involve the loss of existing public and private recreational open space will not be permitted except in certain identified circumstances. Consistent with the aims of the Framework, these include that a satisfactory replacement facility is provided in the catchment area which it serves.
32. In this case the proposed replacement facilities comprise 2 elements: the on-site AWP; and, financial contributions towards improvements to facilities at Ripley Cricket Club and updating the playing pitch strategy for the area, secured by a planning obligation. Based on what I have read and seen, I am satisfied that an AWP of the size shown on the application plans, with particular reference to drawing no. SS2117 04 revision 02, could be accommodated within the site and its provision could be secured by condition. Whilst the AWP would be marked out as a 9v9 youth football pitch, it would also provide a facility suitable for rugby and lacrosse training. The combination of all-weather surfacing and floodlighting would allow longer use than the existing grassed surfaces. Furthermore, the appellant has confirmed that the AWP would be subject to a community use agreement facilitating public use outside of college hours in evenings, weekends and during college holiday periods. This could also be secured by condition.
33. The Council has indicated that in light of these factors, it considers that, although the area of the proposed AWP would be less than that of the recreational open space lost as a result of the appeal scheme, that loss would be balanced by the higher quality of the proposed AWP facility. I consider that, together, the AWP facility and financial contribution towards improvements to facilities at Ripley Cricket Club as well as updating the playing pitch strategy for the area would amount to satisfactory replacement facilities within the catchment. I understand that the proposal is supported by Sport England and this adds further weight to my finding. In relation to this matter, I conclude that the proposal would accord with the requirements of LP Policy R1 and the Framework.

#### *Housing supply*

34. The Council has acknowledged that it is unable to demonstrate a 5-year supply of deliverable housing sites and this is a position supported by a number of

appeal decisions drawn to my attention. The Council has identified that, as of 30 June 2017, its supply level stood at around 4.2 years. The proposal would include up to 89 dwellings, 40% of which would comprise Affordable Housing, consistent with the aims of LP Policy H5. These provisions would make a significant contribution towards meeting the needs of the Borough, in keeping with the aims of the Framework to boost significantly the supply of housing and meet the needs for market and Affordable Housing in the housing market area. Furthermore, the appeal site is situated in an urban location from which jobs, shops and services are likely to be reasonably accessible by sustainable modes of transport, consistent with the aims of CS Policy TRA1. In addition, the proposal would make more efficient use of an area of land for housing, which the appellant has indicated has not been effectively used for recreation for a number of years, in keeping with the aims of CS Policy SG4 and the Framework as regards making efficient use of natural resources. I give these matters substantial weight.

#### *Other benefits*

35. Whilst the appellant has indicated that funds raised through the release of land for housing would be reinvested back into the College, in areas other than the AWP, in the absence of any guarantee to that effect, I give the potential benefits of other improvements to facilities at the college little weight. Whilst the proposal would be likely to provide some benefit to the local economy, with reference to factors such as additional construction expenditure and retail spending of future residents, the New Homes Bonus and Council Tax revenues, there is no evidence before me to show that it would be significant. I give that benefit little weight.

#### *Obligations*

36. In support of the proposal, the appellant has submitted a formally completed UU, pursuant to section 106 of *The Town and Country Planning Act 1990*. The Council has confirmed that the included undertaking would be necessary to make the development acceptable in planning terms. The financial contributions include a £60,000 playing pitch contribution, related to Ripley Cricket Club, and a playing pitch strategy contribution of £10,000, both of which are referred to above. Also referred to above, the UU secures the provision of a £200,000 highways contribution and a £10,000 cycle links contribution. In addition, a Travel Plan monitoring fee contribution of £5,000 would be provided. The aim of the Travel Plan, which would be secured by condition, would be to promote sustainable travel to and from the site. A £100,000 railcard contribution would be provided to encourage future residents of the site to use public transport. These transport related contributions would have the potential to assist in reducing the traffic and environmental impact of the proposed development, in keeping with the aims of the Framework.
37. I consider that the planning obligations contained within the UU accord with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010 (as amended)* and the tests of obligations set out in the Framework.

#### *Conclusions*

38. The Framework indicates that, in the absence of a demonstrable 5-year supply of deliverable housing sites, policies for the supply of housing should not be considered up-to-date and it follows that the presumption in favour of



sustainable development means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

39. I have found that the proposal would not make adequate provision for infrastructure, with particular reference to educational facilities, contrary to the aims of CS Policy C1 and the Framework, and this matter weighs very heavily against the grant of planning permission for the appeal scheme.
40. The proposal would make more efficient use of the appeal site and would make a significant contribution towards meeting the shortfall in both housing land supply and Affordable Housing in the Borough. In addition, the appeal site is situated in an urban location from which jobs, shops and services are likely to be reasonably accessible by sustainable modes of transport. I give those matters substantial weight. The proposed provisions for sporting facilities would amount to satisfactory replacement facilities within the catchment. Furthermore, the appeal scheme would be acceptable in terms of its effect with respect to air quality, the safety and convenience of highway users, the Harrogate Conservation Area and potential employment land. The UU obligations would be necessary to make the development acceptable in planning terms. In my judgement, these factors do not weigh for or against the scheme. I consider that other benefits of the appeal scheme, such as in relation to the local economy, attract little weight. In my judgement neither these, nor any other matters raised are sufficient to outweigh the harm that I have identified.
41. I conclude on balance, that the adverse impacts of the appeal scheme would significantly and demonstrably outweigh the benefits, it would conflict with the Development Plan taken as a whole and would not amount to sustainable development under the terms of the Framework.
42. It appears to me that the 2 elements of the appeal scheme; the proposed housing development and AWP are likely to be physically severable and the proposed AWP, if considered in isolation would be acceptable, subject to the imposition of conditions. However, although not physically linked, in my view the AWP is an integral part of the overall scheme. It is intended as a facility to mitigate the loss of recreational open space which would result for the most part from the implementation of the proposed housing development. Furthermore, the appellant has indicated that the receipts for the sale of the residential portion of the appeal site were intended to fund the delivery of the AWP, which would not be deliverable without approval of the overall application. Given my finding that the scheme including the proposed housing development cannot be supported, I consider that there would be no benefit in issuing a split decision in favour of the AWP alone.
43. I conclude overall, for the reasons given above, that the appeal should be dismissed.

*I Jenkins*

INSPECTOR