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## Appeal Decision

Hearing Held on 21 November 2017

Site visit made on 21 November 2017

**by Elaine Gray MA(Hons) MSc IHBC**

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

**Decision date: 14 February 2018**

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**Appeal Ref: APP/N2739/W/17/3173108**

**West Farm, West End, Ulleskelf, Tadcaster LS24 9DJ**

- 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 T E Fielden Esq against the decision of Selby District Council.
  - The application Ref 2016/0403/OUT (8/64/192A/PA), dated 15 April 2016, was refused by notice dated 5 October 2016.
  - The development proposed is erection of up to 25 dwellings following demolition of existing dwelling and farm-buildings to include access, landscaping and scale.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 25 dwellings following demolition of existing dwelling and farm-buildings to include access at West Farm, West End, Ulleskelf, Tadcaster LS24 9DJ in accordance with the terms of the application Ref 2016/0403/OUT (8/64/192A/PA), dated 15 April 2016, subject to the conditions set out in the schedule to this decision letter.

### Procedural Matters

2. The application was made in outline with all matters of detail reserved for future approval except for access, despite the wording given in the development description above. In addition to a site location plan, a proposed site plan with perspective views was submitted for illustrative purposes. The exact layout and number of dwellings is for the reserved matters stage, but I have taken the illustrative layout into account insofar as it is relevant to my consideration of the principle of the development proposal on the appeal site.

### Main Issues

3. The main issues are:
  - whether the proposal would represent a level of growth that would be appropriate to the size and role of Ulleskelf, and;
  - the effect of the development on the open countryside.

### Reasons

*Five-year housing land supply*

4. The Council's report setting out their five year housing land supply position at April 2017 informed the main parties' Statement of Common Ground. The

Council calculated their supply at that time to be 5.4 years. The appellant held that the supply was 4.3 years.

5. At my request prior to the hearing, the parties produced an agreed Addendum Statement of Common Ground which focused on a number of sites within the supply that remain subject to disagreement over their deliverability. Of these, it was confirmed at the hearing that the appeal in respect of a s106 modification application relating to affordable housing provision at the Barlby-5 site had been allowed. It must therefore reasonably be assumed that this site is now viable, and so I add it to the supply
6. Two sites, N Duffield-7 and Cawood-11, are subject to outstanding applications to modify the respective s106 agreements relating to affordable housing provision. These applications indicate ongoing interest in the development of the sites, and so there is a reasonable chance that they will deliver, particularly in view of their modest sizes. I therefore add both sites to the supply.
7. The Selby-54 site (Rigid Paper Group), which was referred to in the Hodgson's Gate appeal<sup>1</sup> as Selby-33, was deducted from the supply in that decision due to uncertainty over its deliverability. Since then, the Council has received a letter from a developer anticipating that the site will yield 150 units within 5 years. The Council reports that pre-application discussions have been positive, and that a planning application is expected shortly. On this basis, I add the site to the supply.
8. With regard to the Osgodby-6 site, I allow for half the estimate coming forward, working on the basis of the evidence that that these may become self-build sites, each needing a separate planning permission.
9. At the hearing, it was confirmed that, whilst planning permission exists for 14 dwellings at the Camblesforth-12 site, there is no extant listed building consent in place for the proposed development. As the site comprises a Grade I listed building, the lack of a listed building consent is, in my view, a significant impediment to the delivery of the site, and so I deduct it from the supply.
10. The Eggborough-3 site has no planning permission in place. From the Council's narrative, there appears to be a significant issue with access to the site. Although the Council states that pre-application discussions are taking place, there is little substantive evidence before me of how matters are to be resolved. The Barlby-10 site has a recent planning permission in place, but there appears to be a question over its viability in relation to the affordable housing element. No application to modify the s106 agreement has been made as yet, and other problems are alluded to in the Council's narrative. I consider these sites to be marginal, and I deduct them from the supply.
11. With regard to the inclusion of windfalls in the housing supply, I note that appellant allows for no supply from this source in their calculation. In recognition of the drop-off of large windfall sites, the Council has revised the figure to 270 (or 54dpa) in the 2017 reports<sup>2</sup>. I have had regard to the Hodgson's Gate appeal decision, in which the Inspector voiced concern over the inclusion of windfalls, despite the fact that there is no policy basis to preclude them. However, I am satisfied that the Council has substantially reduced the figure, and so I include it in the supply. Taking the above factors into account,

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<sup>1</sup> APP/N2739/W/16/3144900

<sup>2</sup> CS Policy SP5 allows for 105dpa from windfalls.

I conclude that the Council can demonstrate a five year housing land supply, based on the April 2017 report.

12. Prior to the hearing, the Council submitted an updated report demonstrating a housing land supply position, at 30 September 2017, of 6.4 years. Whereas the April 2017 report used a 20% buffer, the September 2017 report uses a reduced buffer of 5%.
13. The September 2017 report shows, at Table 6, that between 2008/2009 and 2013/2014, there was a persistent record of under-delivery in the district, coinciding with the financial crash of 2008 and its aftermath. An under-delivery is recorded for the year 2014/2015, but this figure is notably reduced in comparison to the preceding years.
14. For years 2015/2016 and 2016/2017, the dpa target is exceeded, and the Council indicates that this is also likely to be the case for the current financial year. Indeed, the Council considers that there is likely to be a sustained rate of over-delivery in future years. That being the case, I am satisfied that a 20% buffer is no longer required, and that the Council's use of a 5% buffer in the September 2017 position is justified, and consistent with paragraph 47 of the National Planning Policy Framework (NPPF).
15. The April 2017 report utilised a non-implementation rate of planning permissions of 3%, which the appellant concurred with. The September 2017 report, conversely, uses a rate of 8%, which the appellant disputes, and considers should be 10%. However, the matter is non-determinative, as either percentage would result in a housing supply of more than five years. I therefore further conclude that the Council can demonstrate a five year housing land supply, based on the September 2017 report. Consequently, Policies SP2 and SP5 of the Selby District Core Strategy Local Plan (CS, adopted post-NPPF in 2013) may be considered up to date, and I attach full weight to them.

#### *Policy context*

16. CS Policy SP2 sets out a settlement hierarchy in order to locate future development in the most sustainable locations. The hierarchy comprises the principal town of Selby, the Local Service Centres of Sherburn-in-Elmet and Tadcaster and a number of Designated Service Villages (DSVs), of which Ulleskelf is one. CS Policy SP2 states that DSVs have some scope for additional residential and small-scale employment growth to support rural sustainability.
17. The appeal site comprises agricultural land on the edge of the settlement of Ulleskelf, and is located partially within the development limits of Ulleskelf, and partially in the open countryside. CS Policy SP2 confirms that development in the countryside, outside development limits, will be confined to, amongst other things, proposals for well-designed new buildings that would contribute towards and improve the local economy, and enhance or maintain the vitality of rural communities.
18. In terms of delivery, CS Policy SP5 requires a minimum of 7,220 dwellings during the period 2011-2027, at a rate of 450 per annum. CS Policy SP5 states that allocations will be sought in the most sustainable villages (DSVs) where local need is established through a Strategic Housing Market Assessment and/or other local information. Specific sites will be identified through the Site Allocations part of the local plan. The minimum housing requirement across all

DSVs over the plan period stands at 2000 dwellings, representing 29% of the total housing requirement.

*1<sup>st</sup> main issue - whether an appropriate level of growth*

19. It is a matter of common ground between the main parties that in terms of accessibility, the appeal site is in a sustainable development location with access to scheduled bus and train services close to the site, and access to a range of employment opportunities and other services. From the evidence before me, and my observations during my site visit, I have no basis on which to take a different view on this matter.
20. However, the Council argues that the appeal proposal would lead to an unacceptable level of growth which would be inappropriate to the size and role of Ulleskelf, as set out in CS Policy SP2. In 2015, the Council published a Designated Service Villages Growth Options Report as part of the evidence base for the PLAN Selby Site Allocations Local Plan Document. A number of growth options for DSVs were consulted upon, indicating minimum growth options of 7-24 dwellings for Ulleskelf. A total of 34 dwellings have been built or approved in the settlement since the start of the plan period in April 2011, and so the proposal would exceed the identified minimum growth options. However, whilst the minimum growth options are a material consideration, they do not form part of the development plan, and so I can attach only moderate weight to them. Crucially, no maxima are indicated in the Growth Options Report.
21. The Council confirms that, six years into the plan period, the minimum target of 2000 dwellings for the DSVs as a whole has already been exceeded, with 2,567 homes having been built or given planning permission since the start of the plan period. Whilst I acknowledge this fact, it does not preclude the approval of further planning permissions where there would be no conflict with the development plan.
22. Although I do not underestimate the Council's concerns, there is no cogent evidence before me to show that the infrastructure, services and facilities of the village could not support the additional development of up to 25 dwellings, or that the appeal scheme would somehow represent a tipping point in terms of capacity. Even taking into account existing commitments and permissions, the proposed development for up to 25 dwellings within the overall DSV allocation would not be so substantial, either individually or cumulatively, as to prejudice the emerging strategy or the plan-making process. I therefore conclude that the proposal would represent an acceptable level of growth, and I find no conflict with CS Policy SP5, or the aims of the NPPF.

*2<sup>nd</sup> main issue - effect on the open countryside*

23. As discussed above, the appeal site lies partially outside the development limits of Ulleskelf. I note that the CS indicates that the development limits will be reviewed through further local plan documents. However, until such a review occurs, it seems to me that the existing development limits continue to serve as a tool to implement the development strategy of the CS, which is to direct new development to the most sustainable locations. This is broadly consistent with paragraph 55 of the NPPF.

24. Nonetheless, in terms of impact on the open countryside, the Council has not, for example, identified any material harm to the character and appearance of the area that would arise from the appeal scheme. I find no reason to disagree with that position. The new development would add to the existing urban form, but would be closely associated with it.
25. The Council's primary concern relates to the overdevelopment of the village. I have set out my views on that issue above, and found the development to be acceptable in that regard. Therefore, in the absence of any substantive evidence to indicate material harm to the countryside, I find no conflict with CS Policy SP19, insofar as it requires development to have regard to the local character, identity and context of its surroundings, including settlement patterns and the open countryside. Furthermore, I find no conflict with CS Policy SP2, or the policy aims of the NPPF. The effect of the development on the open countryside would be acceptable.

### **Planning balance**

26. The Council can demonstrate a five year housing land supply. The NPPF seeks to boost significantly the supply of housing, and therefore the presence of a five year supply does not preclude the grant of planning permission for additional housing that would accord with the development plan.
27. The development would help to boost the supply of housing in the district, and I have agreed that it would be in a sustainable location. It would provide some short-term employment opportunities during the construction phase. In the longer term, it would provide homes whose future occupants would be likely to support local services and facilities in Ulleskelf, thus contributing economically and socially to the village. Additional social benefits would arise from the provision of affordable housing, as sought by CS Policy SP9.
28. Occupants would also be likely to access the higher order centres of Selby and Goole, which are served by public transport facilities that are within reasonable walking distance of the appeal site. Accordingly, these benefits are all afforded moderate weight in favour of the proposal. The proposal would be small-scale and whilst the appeal site is partially situated outside the development limits of Ulleskelf, it is close to existing residential development. Consequently, I consider that the site relates well to the built-up area. Whilst detailed landscaping proposals are not before me, the indicative plans show the existing landscaping on the boundaries of the site strengthened. Hence I am satisfied that the proposal could be assimilated into the landscape with a satisfactory scheme.
29. Consequently, I conclude that the appeal proposal would accord with the development plan and the NPPF overall, and is thus acceptable. The proposal represents sustainable development and permission should be granted.

### **Other Matters**

30. I have had regard to the concerns raised by interested parties, including flood risk and drainage, highways, and the effect on services and local infrastructure. However, the Council has offered no objection to the appeal scheme in respect of these matters, and there is no substantive evidence before me that would lead me to take a different view.

31. I have taken account of the cases and decisions referred to by the main parties, and all other representations provided by interested parties, but these have not led me to a different conclusion on the main issues of the appeal.

### **Planning obligation**

32. Regulation 122 of the Community Infrastructure Levy Regulations 2010 requires that if planning obligations are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.

33. A completed and signed s106 agreement was submitted at the hearing, securing on-site affordable housing, on-site recreational open space, and a contribution towards the cost of providing waste and recycling facilities directly related to the development. The agreement is not in contention in this appeal. I was provided with a statement of CIL compliance by the Council at the hearing, and I am satisfied that the agreement meets the tests set out in the CIL regulations. I have therefore taken the s106 agreement into account in reaching my decision.

### **Conditions**

34. The Council has suggested a number of planning conditions which I have considered against the relevant advice in the Planning Practice Guidance (PPG). As a result, I have amended and combined some of them for clarity and brevity.

35. For certainty, it is necessary that the development is carried out in accordance with the approved plans. A condition relating to archaeology is necessary in the interests of the protection of heritage. Conditions relating to landscaping are appropriate in the interests of character and appearance. Conditions requiring a Construction Method Statement and details where foundations are to be piled are necessary to safeguard the amenity of residents.

36. Conditions relating to contamination, water management, flooding and drainage are necessary in the interests of safety and proper site management. Conditions relating to highways, visibility and provision of access, parking areas and lighting are necessary to ensure highway safety. Conditions in respect of ecology, arboriculture and the energy supply are necessary in the interests of sustainability.

37. It is essential that the requirements of Conditions 4, 14, 15, 17 and 21 are agreed prior to the development commencing to ensure that the development is acceptable in respect of the matters they address.

### **Conclusion**

38. For the reasons above, I conclude that the appeal should be allowed.

*Elaine Gray*

INSPECTOR



**APPEARANCES**

**FOR THE APPELLANT:**

Paul Leeming	Carter Jonas
James Garbett	Walker Morris

**FOR THE LOCAL PLANNING AUTHORITY:**

Yvonne Naylor	Principal Planning Officer
Gillian Marshall	Solicitor
Richard Ward	Planning consultant
Richard Welch	Planning Policy Officer
John Hunter	Counsel instructed by Selby District Council

**INTERESTED PERSONS:**

John Mackman	Local Councillor
Naomi Warenberg	Pegasus Group
Melissa Madge	MM Planning
Rachel Barlett	2RB Planning
Mark Newby	Yew Tree Associates
Robert Walker	Observer

**DOCUMENTS RECEIVED DURING THE HEARING**

- 1) S106 agreement, signed and dated.
- 2) CIL Compliance Statement.
- 3) Periphery Landscape Masterplan.
- 4) Appellant's calculation of the five year housing land supply, based on the Council's September 2017 housing land supply position report.

### **SCHEDULE OF CONDITIONS**

- 1) Details of the scale and appearance of the buildings and the landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan LOC1; Existing site plan Y81-910-02 Rev C; Tree Constraints Plan SF2362/TC01; Access Layout; Periphery Landscape Masterplan LM01 B.
- 3) The total number of dwellings authorised by this permission shall not exceed 25 and any reserved matters application submitted pursuant to Condition 1 shall be limited to this maximum in total.
- 4) No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 5) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 6) The development hereby permitted shall only be carried out in accordance with the approved flood risk assessment (FRA) 4089/FRA01B, dated April 2016, and the following mitigation measures detailed within the FRA:
  1. There shall be no development on land that is currently below 9.13m above Ordnance Datum (AOD);
  2. Finished floor levels shall be set no lower than 9.73m AOD.The mitigation measures shall be fully implemented prior to the first occupation of the development, and shall be maintained subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing, by the local planning authority.
- 7) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:



- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - include a timetable for its implementation, and;
    - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) A strip of land 9 metres wide adjacent to the top of both banks of all watercourses on site shall be kept clear of all new buildings and structures (including gates, walls, fences and trees) unless agreed otherwise in writing with the local planning authority. Ground levels must not be raised within this area. Access arrangements shall be agreed with the Internal Drainage Board.
- 9) Details of a permanent 4 metre wide undeveloped strip which shall be made available across the site shall be submitted to and approved in writing by the local planning authority. The strip shall be maintained thereafter in accordance with the approved details. Access arrangements shall be agreed with the Internal Drainage Board.
- 10) No dwelling hereby permitted shall be occupied until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low-carbon energy sources including details and a timetable of how this is to be achieved, including details of physical works on site, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and retained as operational thereafter unless otherwise approved in writing by the local planning authority.
- 11) The development hereby permitted shall be carried out in accordance with findings and mitigation measures outlined in the Preliminary Ecological Site Appraisal by Smeeden Foreman dated April 2016 and the Further Bat Surveys by Smeeden Foreman dated April 2016.
- 12) The development shall be carried out in complete accordance with the recommendations set out in the Arboricultural Survey by Smeeden Foreman, dated April 2016.
- 13) The landscaping scheme approved as a reserved matter, based on drawing number LM01 B, shall be completed within 12 months of the first dwelling being occupied.
- 14) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British

Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

- i. a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
  - ii. the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems, and;
    - archaeological sites and ancient monuments.
- 15) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site would not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 16) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 17) Should any of the proposed foundations be piled, no development shall commence until a schedule of works to identify those plots affected, and setting out mitigation measures to protect residents from noise, dust and vibration has been submitted to and approved in writing by the local planning authority. The proposals shall thereafter be carried out in accordance with the approved schedule.

- 18) Unless otherwise approved in writing by the local planning authority, there shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the following drawings and details have been submitted to and approved in writing by the local planning authority:
- (1) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey, showing:
    - (a) the proposed highway layout, including the highway boundary;
    - (b) dimensions of any carriageway, cycleway, footway, and verges;
    - (c) visibility splays;
    - (d) the proposed buildings and site layout, including levels;
    - (e) accesses and driveways;
    - (f) drainage and sewerage systems;
    - (g) lining and signing;
    - (h) traffic calming measures, and;
    - (i) all types of surfacing (including tactiles), kerbing and edging.
  - (2) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:
    - (a) the existing ground levels;
    - (b) the proposed road channel and centre line levels, and;
    - (c) full details of surface water drainage proposals.
  - (3) Full highway construction details including:
    - (a) typical highway cross-sections to a scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths;
    - (b) when requested, cross-sections at regular intervals along the proposed roads showing the existing and proposed ground levels;
    - (c) kerb and edging construction details;
    - (d) typical drainage construction details;
  - (4) Details of the method and means of surface water disposal.
  - (5) Details of all proposed street lighting.
  - (6) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.
  - (7) Full working drawings for any structures which affect or form part of the highway network.

(8) A programme for completing the works.

The development shall only be carried out in full compliance with the approved drawings and details unless agreed otherwise in writing by the local planning authority.

- 19) No dwelling hereby permitted shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation. The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the local planning authority before the first dwelling of the development is occupied.
- 20) There shall be no access or egress by any vehicles between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway, together with a programme for their implementation, have been submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with the approved details and programme.
- 21) No development shall commence until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. As a minimum, the statement shall provide for:
- a. the parking of vehicles of site operatives and visitors;
  - b. the loading and unloading of plant and materials, and their storage;
  - c. the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing where appropriate;
  - d. wheel washing facilities
  - e. measures to control of the impact of noise, vibration, dust and dirt during construction;
  - f. a scheme for the recycling/disposal of waste resulting from demolition and construction works, and;
  - g. HGV routing.

The approved Construction Management Statement shall be adhered to throughout the construction period of the development.