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## Appeal Decision

Hearing Held on 21 and 22 February 2018

Site visit made on 22 February 2018

**by Paul Singleton BSc (Hons) MA MRTPI**

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

**Decision date: 21 March 2018**

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**Appeal Ref: APP/N2739/W/17/3181460**

**Land at Field Lane, Thorpe Willoughby, YO8 9 FL**

- 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 Sherwood Brothers Ltd against the decision of Selby District Council.
  - The application Ref 2016/1345/OUTM, dated 11 November 2016, was refused by notice dated 14 July 2017.
  - The development proposed is outline residential development with means of access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The first reason for refusal, concerning a risk of harm to public water supplies provided by the Triassic Sherwood Sandstone Aquifer, was subsequently withdrawn and no evidence was presented on this at the Hearing. An application for costs in relation to the first reason, included in the appellant's Statement of Case, was withdrawn at the Hearing.
3. The application sought approval for means of access with all other detailed matters reserved. The Transport Assessment (TA) assessed the proposal on the assumption that there would be two points of access from Field Lane but no separate drawing showing the details of these accesses was submitted.
4. The Indicative Layout drawing shows two main access points but also includes a number of direct accesses from Field Lane to individual dwellings which were not assessed in the TA. The appellants accepted that this gives rise to some confusion and withdrew their request that means of access be approved at this stage. I have, accordingly, considered the appeal on the basis that all detailed matters are reserved.
5. At the time of its decision on the application the Council was unable to demonstrate a 5 year forward Housing Land Supply (HLS) as required by paragraph 47 of the National Planning Policy Framework (Framework). Following the preparation of a new Strategic Housing Land Availability Assessment (SHLAA) in July 2017 and a HLS update, with a base date of 30 September 2017, the Council considers that it can now demonstrate a supply of 6.2 years. The existence of a 5 year HLS has subsequently been accepted by

an Inspector in an appeal decision concerning a proposal for 25 dwellings at West Farm in Ulleskelf<sup>1</sup>, issued on 14 February 2018. The findings of that Inspector (Inspector Gray) were discussed at the Hearing.

6. In his decisions on two further housing appeals in Selby District, both issued on the 26 February 2018, Inspector Normington also accepted that the Council has a deliverable 5 year HLS. These appeals concern an outline application at Church Fenton<sup>2</sup> and an outline proposal for 57 dwellings in North Duffield.<sup>3</sup> The parties were given an opportunity to comment on what bearing, if any, those decisions have on the matters before me. I have taken account of their comments in my determination of the appeal.
7. Following the close of the Hearing the Council sought to submit additional information on two of the sites within its claimed 5 year HLS including copies of the Section 106 Agreements. One of these had been submitted at the Hearing and I agree with the appellants that no further information had been requested when the Hearing was closed. I have not taken that late information into account in reaching my decision.
8. In view of the recent appeal decisions and the additional information received after the submission of the written statements, it is appropriate to deal with the 5 year HLS as a main issue.

### **Main Issues**

9. The main issues in the appeal are:
  - (a) Whether the Council is able to demonstrate a 5 year forward Housing Land Supply;
  - (b) Whether the site is an appropriate location for the development proposed having regard to relevant planning policies; and
  - (c) The effect on the character and appearance of Thorpe Willoughby and on the setting of Brayton Barff having regard to its inclusion within a Locally Important Landscape Area.

### **Reasons**

#### *Housing Land Supply*

10. The decisions in the Ulleskelf, Church Fenton and North Duffield appeals are not binding on me but there is a need for consistency between decisions made on appeals in the same local planning authority area which raise similar issues. They are, therefore, material and provide a useful starting point for my assessment of whether or not a 5 year HLS exists.
11. Policy SP5 of the Selby District Core Strategy Local Plan (CS), adopted in October 2013, identifies the objectively assessed need for new housing in the District to be for a minimum of 7,200 dwellings over period 2011 to 2027. This equates to an average requirement of 450 dwellings per annum (dpa) which the policy states is to be met by commitments (sites with planning permission at the CS base date of 2011) and new allocations in the proposed Site

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<sup>1</sup> APP/N2739/W/17/3173108

<sup>2</sup> APP/N2739/W/17/3175463

<sup>3</sup> APP/N2739/W/17/3183958

- Allocations Plan (SAP). Allowing for commitments as at 2011 (minus a 10% allowance for non-delivery), Policy SP5 states that sufficient land will be allocated for 5,340 new dwellings.
12. In the Hodgson's Gate appeal<sup>4</sup> the Inspector found that, although there is no policy basis for excluding them, the inclusion of windfall sites in the 5 year HLS should be treated with caution. This was accepted by Inspector Gray who concluded that the windfall component in the September 2017 HLS does reflect an appropriate level of caution. I agree with that conclusion.
  13. CS Paragraph 5.9 states that the Council made no allowance for future contributions from windfalls in calculating the number of dwellings to be provided through new allocations and that, over the life of the plan, windfalls are likely to add to the total delivery of homes in excess of the planned for target. Paragraph 5.38 indicates that this over delivery was expected to occur from about 2016 but paragraph 5.44 anticipated that the SAP would be adopted by 2015. That has not happened and I was advised that the SAP is not likely to be adopted until the end of 2019. The slippage in the preparation of the SAP means that the Council will be reliant on windfall contributions for longer than was expected when the CS was adopted. However, the continued inclusion of windfalls in the 5 year HLS is not inconsistent with the CS, as explained in Appendix C to the plan.
  14. Paragraph B3 of that document states the intention that the SAP should allocate sufficient land to meet at least the net requirement (based on the 450 dpa figure) once existing planning permissions identified in the 5 year HLS at that time (my emphasis) have been taken into account. Hence, although not included in the supply calculation in Policy SP5, account is to be taken both of completions on windfall sites and windfall sites with permission at that base date ('known' windfalls) in determining the level of new allocations required in the SAP in order to meet the residual housing requirement (paragraph B2). Permissions granted on unallocated sites after that date ('unknown' windfalls) would then be counted as additional contributions on top of the 450 dpa target.
  15. Given that expectation, I see no objection to the inclusion of windfalls in the 5 year HLS at this stage of the plan process. The lack of a 5 year HLS is likely to have resulted in an increased number of completions on windfall sites in recent years. However, the contribution of 270 units in the current 5 year HLS is substantially less than in previous assessments and is a modest estimate compared with the annual average windfall completions in the past 5 years. That contribution represents an appropriately cautious approach and I see no reason for any adjustments to be made to the housing requirement or the 5 year HLS in respect of windfalls.
  16. No evidence was submitted to show that a 10% non-implementation rate is any more appropriate than the 8% rate used the September 2017 HLS. The Council's figure has been informed by assessing slippage in the delivery of two large sites with planning permission, an updated SHLAA and discussions with landowners and developers. I have no reason to conclude that this is an unreasonable estimate of the likely level of non-implementation.
  17. Over the ten year period from 2007/08 to 2016/17 the Council failed to meet its dpa target in 7 years and exceeded it in the other 3. The target has been

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<sup>4</sup> APP/N2739/W/16/3144900

exceeded in the last 2 completed years and evidence of completions in the sixth months to 30 September 2017 suggests that it will be met in the current year. This performance does not, in my view, equate to a record of persistent under-delivery and I agree with my colleagues that the use of a 5% buffer is consistent with paragraph 47 of the Framework.

18. Footnote 11 to the Framework states that, for a site to be deliverable, it should be available now, offer a suitable location for development now, and be available with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable. Further clarification is provided in the Court of Appeal judgment in the St Modwen case<sup>5</sup>. This held that each of these considerations goes to a site's capability of being delivered within five years; not to the certainty or probability that it will be. Sites may be included if there is no greater than a realistic prospect of housing being delivered within the five year period.
19. Inspector Normington deducted a total of 21 dwellings due to corrections and these were also identified in Table 3 of the Council's Response Statement. Both he and Inspector Gray found that Camblesforth-12 should be deleted due to the absence of an extant listed building consent. I agree with those findings.
20. The appellants do not challenge the Barlby-5 site and I agree that this should be included. In relation to N Duffield-7 and Cawood-11, I agree with Inspector Gray that the applications to amend S106 agreements in respect of the level of Affordable Housing (AH) on the sites indicate an ongoing interest in their development. No additional information was submitted in respect of N Duffield-7 and I find no reason why it should be excluded.
21. I was provided with a copy of a resolution to dispose of Council owned land needed for access to Cawood-11 and of an email, dated 18 February 2018, confirming that terms have been agreed and contracts for that disposal have been drafted. In light of the £240,000 estimated land value given to the Executive meeting in May 2017 this purchase would represent a substantial investment by the site owner. This does not support the viability concerns raised by the appellants. I find that Cawood-11 should be included.
22. There is strong evidence that a new planning application for a revised and more viable scheme on the Selby-54 site is being prepared. The Canal and Rivers Trust's concerns about the proposed footbridge appear to have been resolved and agreement has been reached for the purchase of land needed for its construction. I find that this site should be included in the 5 year HLS. In the absence of new information in relation to the Osgodby-6 site I adopt Inspector Gray's finding that 7 of the 14 units should be included in the 5 year HLS.
23. Inspector Gray deleted the Eggborough-3 site as no planning permission is in place and because of concerns about a potential ransom situation in relation to the site access. Terms have now been agreed between the owners of the two parts of the site and transport consultants have been appointed to progress proposals for access from Lower Eggborough Road. The main ownership extends to that road and, as the farmhouse and outbuildings on that frontage are in the same ownership, these do not appear to represent a major

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<sup>5</sup> St Modwen Developments Limited v SSCLG & East Riding of Yorkshire Council & Save Our Ferriby Action Group [2017] EWCA Civ 1643

- impediment to the site's development. The agent's email of 21 February 2018 confirms that the development is funded and anticipates the full 100 dwellings being built by 2021/22. The Council's assumed contribution of 75 units is, therefore, reasonable and should be included in the five year supply.
24. No further information has been provided on Barby-10 and I adopt Inspector Gray's conclusion that this should be deleted due to viability concerns and an apparent dispute about the level of AH provision on the site. Although part of the larger site allocated in the 2005 Selby District Local Plan (LP) is to be retained as open space, Camblesforth-7 adjoins land that has been granted permission for residential development. The owner is willing to make the land available and there is no evidence that it is unlikely to come forward for development. The site should be included.
25. CS Policy SP9 states that the Council will seek AH provision up to a maximum of 40% and that the actual level is a matter for negotiation at the time of a planning application. The policy provides scope for the level of AH to be renegotiated at Reserved Matters stage and the Council advises that this has been done on a number of housing sites. The S106 agreement attached to the Osgodby-4 permission requires 40% AH provision and this appears to have been the Council's standard approach. However, developers can seek to vary those agreements if appropriate viability evidence is provided. If, as the appellants suggest, the Council's surveyor has indicated that these sites would be viable only with a reduced level of AH, there would appear to be scope for agreement on these matters. I see no reason to exclude either of the Osgodby-4 or Whitley-14 sites from the identified supply.
26. The agent for the Sher-9 site has suggested a possible disposal to developers of the adjacent site, with the two sites being taken forward as one larger scheme over a number of years. However, the Council advises that Sher-9 site could be developed in tandem with the adjacent land and the agent's letter confirms that the exact course of action to be taken is unknown. Development of the site might possibly be delayed for market reasons but this does not mean that there is no realistic prospect of the site coming forward in the 5 year timescale. I concur with Inspector Normington that Sher-9 should be included in the supply.
27. The appellants' concerns about land ownership issues constraining the access needed to the Brayton-20 site are, in my view, misplaced as the County Council has confirmed that Evergreen Way is an adopted highway. The Land Registry plans indicate that the title of some adjacent properties extends across the road but I have no evidence that these show anything more than a legal interest in the subsoil under the public highway. Such interests would not be an impediment to securing access to the site from Evergreen Way and I see no other reason to exclude the site from the 5 year HLS.
28. In summary, I concur with the changes made by Inspector Gray except in relation to the Eggborough-3 site which I find should be included. This adds 75 dwellings to the supply as set out in Scenario 1 in Document SDC4 and results in a supply of 3,470 against a 5 year requirement of 2,814, allowing for a 5% buffer. Accordingly, I conclude that the Council can demonstrate a 5 year HLS as required by paragraph 47 and that the relevant policies for the supply of housing should be considered to be up-to-date.

*Whether an appropriate location*

29. The site lies on the edge of the built area of Thorpe Willoughby within walking distance of local shops and other facilities and services. Some objectors have expressed concerns about the future of the parade of shops on Field Lane. A Certificate of Lawfulness of Proposed Use or Development, confirming that an earlier planning permission for the site's redevelopment could still be implemented, was issued in 2014 but no works appear to have been undertaken since then. The small convenience store has recently closed but I saw no evidence to suggest the likely closure of the pharmacy and hair salon.
30. Direct bus services to Leeds have been withdrawn but the bus stops on Field Lane are used by regular services providing access to the wide range of facilities, services and employment opportunities in Selby, and to Selby bus and rail stations. The proposal would, therefore, provide for access to shops and other facilities by sustainable means.
31. The appellants refer to the Hodgson's Gate Inspector's conclusions to support their assertion that the development limits shown on the Policies Map are out-of-date. However, at the time that decision was made the Council could not demonstrate a 5 year HLS and paragraph 73 confirms the Inspector's finding that policies setting development limits are relevant policies for the supply of housing. The comment in paragraph 74 concerns the weight to be given to the conflict with the development plan rather than whether or not the development limits should be regarded as being out-of-date.
32. The statement on CS page 36 makes it clear that the development limits are to be used for the purposes of applying CS policies. In *Gladman Developments v Daventry Council*<sup>6</sup> the Court of Appeal held that significant weight should be given to the public interest in having plan-led decisions even if particular policies might be old. Daventry Council had previously granted permissions for housing development outside of defined development limits but the Court ruled that *"the fact that the Council is able to show that, with the current saved policies in place, it has the requisite five year supply... tends positively to indicate that the current policies are not "broken" ... since they can be applied without jeopardising the five year housing supply objective"* (paragraph 44). The same circumstances apply in the current appeal and I see no reason why full weight should not be given to the development limits and Policy SP2.
33. Although immediately adjoining the existing built area of Thorpe Willoughby the site lies outside the development limits and is within the open countryside. The proposal does not fall within any of the 'exceptions' set out in Policy SP2(c) and conflicts with the policy.
34. The CS minimum target of 2,000 new dwellings across the 18 Designated Service Villages (DSVs) as a whole has already been exceeded by more than 25%, with 2,663 homes having been completed or with planning permission. Policy SP5 does not set maxima for the DSVs or for housing provision in the District as a whole. However, as this position has been reached within the first 6 years of a 16 year plan period, the release of new large housing sites in those DSVs which are already experiencing considerable growth would cause significant harm to the spatial strategy that underpins the CS.

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<sup>6</sup> Gladman Developments Limited V Daventry District Council & SSCLG [2016] EWCA Civ 1146

35. The Council's Growth Options Report, identifying possible housing numbers in each of the DSVs based on 3 different growth options, was published for consultation in June 2015. The Thorpe Willoughby options indicate growth of between 61 and 83 new dwellings. With some 486 dwellings completed or having been granted planning permission since the start of the plan period, those indicative levels of growth are likely to be exceeded by a significant degree. If 108 dwellings were to be developed on the appeal site the total number of new dwellings in the village would increase to 594. This would be nearly 7 times the upper level of growth indicated in the Growth Options Report and would account for more than 25% of the minimum 2,000 additional dwellings envisaged in the 18 DSVs as a whole.
36. Notwithstanding its proximity to Selby and the potential for development in Thorpe Willoughby to complement growth in that main town, an additional 594 dwellings would be a disproportionate share of the overall growth envisaged in the DSVs. When compared to the existing size of the settlement, which the officer report identifies as having comprised some 1,200 dwellings at the 2011 census (within Thorpe Willoughby Parish) this would also represent a disproportionate expansion of the village. There is no substantive evidence that this would result in unacceptable pressure on local infrastructure and services. However, such expansion cannot reasonably be considered to represent the limited further growth that CS paragraph 4.27 anticipates even in those DSVs which have a good range of services. Neither would it represent an appropriate scale of development as envisaged in paragraph 4.28.
37. As it forms part of the evidence base for the emerging SAP, only limited weight can be given to the Growth Options Report. However, against the background of an HLS in excess of the minimum 5 year requirement, the release of the appeal site for the scale of development proposed would seriously undermine the spatial strategy of the development plan. For this reason I find that the proposal would conflict with CS Policy SP2 and SP5. The Council has confirmed that Policy SP4 does not apply to proposals on sites outside of development limits and I find no conflict with that policy.

#### *Character and appearance*

38. Following the resolution to refuse permission, Arup gave additional advice to officers and provided inputs into the third reason for refusal and the Council's Statement of Case. This was a reasonable course of action for officers to satisfy themselves that Reason 3 could be substantiated on appeal. Both parties presented expert evidence on the potential landscape and visual effects at the Hearing. This evidence and my observations on the site visit provide all the information needed to inform my conclusions on these matters.
39. The three fields comprising the appeal site are of limited landscape value and are screened by almost continuous boundary hedging along the Field Lane frontage and the extensive woodland planting between the site and the A63 bypass. Short sections of the boundary hedge would need to be removed to facilitate access to the site but there would be scope for some replanting behind the requisite visibility splays. The development would be contained by existing boundary treatments and additional landscaping within the site layout and would not be visually prominent from outside of the site.
40. The site lies within Sector A of the Thorpe Willoughby Landscape Character Area (LCA) which is defined in the 2011 Landscape Appraisal as an area of low

sensitivity to development. Given its current use and appearance I do not accept that the site does not function as open countryside. However, the development would visually be contained by the dense planting along the boundary with the A63. The harm to the character and setting of the village would not be significant and the proposal would have a very limited effect on this part of the LCA.

41. Brayton Barff is a valued landscape feature and is well used as a recreational resource. The hill is the principal feature within the slightly more extensive Locally Important Landscape Area (LILA). The Council has previously granted planning permission for holiday cabins within the LILA but the development of a small number of log cabins in a woodland setting is not comparable to the appeal proposal in terms of its likely landscape and visual effects.
42. No direct harm to the character of the Barff and LILA is alleged and the Council's concerns relate to the potential effect on the setting of the Barff. The open fields to the east of the appeal site provide for a substantial landscape buffer between the site and the Barff and there is very limited intervisibility between the two. This lack of intervisibility is consistent with the absence of any reference to the Barff in the Landscape Appraisal's assessment of the character and importance of Sector A of the LCA.
43. Very limited views of the site are available from the footpath around the lower slopes of the Barff and, where these do exist, they are heavily filtered by intervening trees and hedges even during winter months. The gable ends to a few of the houses might appear in some of those views but they would be seen at some distance and against the background of the existing built edge of the village. Appropriate mitigation could be achieved by additional planting along the eastern boundary of the site. Such planting would also soften views of the houses from the public footpath at the eastern edge of the site and could be used to reduce any increased sense of enclosure to that path. Users of the footpath would experience some change in views but I do not consider that this would amount to material harm.
44. Although the Barff is visible from Field Lane only the upper parts of the wooded hill are seen above the roadside hedge. Other than through the small number of field gates, the fields comprising the appeal site are not seen in these views and do not form part of the setting of the Barff as experienced from the road or pavement. Residents of properties on Field Lane may have a clearer view from upper floor windows but, even in those views, the site is likely to form only a limited part of the foreground to the Barff.
45. Accordingly, I find that the appeal site makes no meaningful contribution to the setting of Brayton Barff and that there would be no material harm either to that setting or to the character of the LILA. No conflict arises with CS Policy SP18 which seeks the protection of landscape character and of the setting or areas of acknowledge importance. The Council has referred to LP Policy ENV15 but, as that policy is concerned only with proposals on sites within a designated LILA, I do not consider that it is applicable to the appeal proposal.

### **Other Matters**

46. The TA demonstrates that two points of access can be accommodated on Field Lane. I observed that the requisite visibility splays can be achieved for the two main accesses shown on the indicative layout and the Highways Officers advise



that these are acceptable in highway safety terms. I cannot comment as to the acceptability of different access locations or of direct access to individual dwellings. However, I find that a satisfactory means of access could be achieved to serve the level of development envisaged on the site.

47. Some objectors have concerns about the effect on the aquifer but Yorkshire Water's consultation response identifies that the main risk to water supplies would be at the construction stage. I have seen no evidence that the risk could not be mitigated by means of planning conditions or other regulatory controls.
48. The site is some distance from existing dwellings and there would be no material risk of harm to the living conditions of occupiers of nearby properties by reason of loss of privacy or outlook. The potential risks of noise and disturbance during the construction phase could be mitigated by means of a suitably worded Construction Management Plan.

### **Planning Obligations**

49. The Section 106 Agreement includes obligations with regard to AH and open space and a payment to the Council for the provision of waste and recycling bins. These are necessary to ensure that the development is acceptable in planning terms and accords with the relevant planning policies. I consider the weight to be given to the AH provision in the conclusions set out below.

### **Conclusions**

50. The proposal conflicts with the development plan by reason of the site's location in the open countryside and the serious harm to the Council's spatial strategy and its ability to deliver a plan-led approach to housing development. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise.
51. The proposal would help to boost the supply of housing but paragraph 47 of the Framework indicates that this should be achieved through a plan-led approach where a 5 year HLS exists. The additional market and AH would be a social benefit and economic benefits would flow from the construction investment and the potential expenditure by the future residents in local shops and services. However, in view of the level of new housing provision already achieved and committed in Thorpe Willoughby and the other DSVs, there is no urgent or pressing need to release a large greenfield site in this location.
52. Some environmental benefit could be achieved in terms of the potential to enhance biodiversity on the site but this would be offset by the harm to the locational strategy underpinning the CS. The proposal would not, therefore, fulfil the environmental dimension of sustainable development.
53. The potential benefits neither outweigh the harm that would be caused nor amount to material considerations that indicate a decision other than in accordance with the development plan. For these reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

*Paul Singleton*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT

Megan Thomas of Counsel

Joe O'Sullivan BSc (Hons) PGDIP URP MRTPI AAH Planning Consultants

John Flinn PGDip LA MA Land Innovations

Steve Wilkinson Land Innovations

Kevin Sherwood Sherwood Brothers Ltd.

### FOR THE COUNCIL

Jonathan Easton of Counsel

Ann Rawlinson BSc (Hons) MTp MRTPI Principal Planning Officer

Richard Welch MPlan MRTPI Principal Planning Officer

Tom Armour Director Arup

Emma Sharpe Assistant Landscape Architect Arup

### INTERESTED PERSONS

Sylvia Parkinson Local Resident

Anthony Hattersley Local Resident

Trevor Rhodes Local Resident

Raymond Stanley Local Resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

Signed S106 Agreement

SDC1- Addendum Statement of Common Ground in relation to the West Farm, Ulleskelf appeal.

SDC2- Bundle of Council Minutes and Emails regarding housing sites included in the Council's claimed HLS.

SDC3- Email correspondence between the Council and Arup.

SDC4- Note setting out various HLS scenarios.

SDC5- 5 Year HLS Report Position at 30 September 2017.

SDC6- Appendix C to Selby Core Strategy Local Plan regarding Housing Delivery and Windfalls.

SDC7- S106 relating to the Osgodby-4 housing site.