



Appeal Decision

Hearing Held on 4 April 2018

Site visit made on 4 April 2018

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th April 2018

Appeal Ref: APP/N2739/W/17/3188353

Land to the west of Mill Lane and south of Orchard End, Hemingbrough

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr F Gelder against the decision of Selby District Council.
 - The application Ref 2016/1513/OUTM, dated 27 December 2016, was refused by notice dated 19 June 2017.
 - The development proposed is for the erection of up to 25 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing applications for costs were made by Mr F Gelder against Selby District Council and by Selby District Council against Mr F Gelder. These applications will be the subject of separate Decisions.

Procedural matters

3. The appeal was the subject of a previous Hearing on 20 February 2018 led by a different Inspector. This Hearing was adjourned following questions raised by the Inspector relating to housing land supply matters. For reasons not connected with the appeal, the appointed Inspector was unable to resume the adjourned Hearing and instead, I was appointed to determine the appeal and conduct proceedings thereafter. Consequently, at the reconvened Hearing, I explained that I would need to deal with matters completely afresh.
4. At the time that the Council determined the planning application, it was unable to demonstrate a five year supply of deliverable housing sites. However, during the course of the appeal and around the time of the initial Hearing event, the Council received notification of a number of planning appeals where it was concluded that the Council could now demonstrate a five year supply. During the intervening period, an agreed revised Statement of Common Ground was submitted. Of particular relevance to this appeal is that the parties now agree that the Council is able to demonstrate that it has a five year's supply of deliverable housing sites although the extent thereof is not agreed.
5. In addition, the appellant entered into a section 106 Agreement relating to matters of affordable housing and open space provision and waste recycling

contributions. Notwithstanding, this carried a caveat. The appellant firmly believes that the matters covered by the section 106 Agreement should be dealt with by way of planning conditions and that his preference in the event of my finding in favour of the appeal proposal is that the agreed covenants are dealt with by way of planning conditions. The appellant drew my attention to two appeal decisions¹ where the Inspector in one case and a Reporter in another (Scottish case) dealt with matters of affordable housing through the use of planning conditions.

6. However, I find this request to be problematical in that there is a signed section 106 Agreement now in place, which has clearly been entered into voluntarily. Moreover, it would be enforceable in the event of any subsequent breach of covenants contained therein. Irrespective, as I am dismissing this appeal on the substantive grounds, I need not consider this issue further.
7. The application is in outline with all matters reserved for future consideration. I have considered this appeal on this basis.

Main Issues

8. Consequently, the main issues in this appeal are:
 - Whether the proposed development would be appropriately located having regard to the Council's spatial strategy for new housing with particular regard to the location of the site outside the present development limits for Hemingbrough, and;
 - The effect of the proposed development on the character and appearance of the area.

Reasons

Whether an appropriate location vis a vis the Council's spatial strategy

9. The appeal site comprises a relatively flat rectangular shaped field immediately to the rear of properties at Orchard End. These properties are in a slightly elevated position and comprise predominantly detached two storey houses arranged in linear style with relatively shallow rear gardens with very little in the way of effective landscaping along their southern boundaries.
10. The development plan comprises the Selby District Core Strategy Local Plan 2013 (Core Strategy) and the Selby District Local Plan Part 1: General policies 2005 (Local Plan). The Council believes the appeal turns primarily upon whether the proposed development would comply with Policy SP2A of the Core Strategy, which establishes the spatial distribution of housing within the District. This policy establishes a hierarchical approach to the distribution of development across three tiers of settlements comprising the Principal Town of Selby, the Local Service Centres of Sherburn-in-Elmet and Tadcaster, together with a number of Designated Service Villages (DSVs) of which Hemingbrough is one. This latter category of settlements is recognised as having some scope for additional residential and small scale employment growth to support rural sustainability.
11. Both parties agree that the site is situated within open countryside for planning purposes and where Policy SP2A(c) of the Core Strategy would apply. This

¹ APP/F2605/W/17/3183968 and 16/01663/APP (Scottish Government)

- restricts non-allocated development in the countryside to specific circumstances, which do not apply in this case. I concur with the Council that this policy is broadly consistent with the guidance set out in paragraph 55 of the National Planning Policy Framework (the 'Framework'). Although the settlement boundary is identified within the time constrained Local Plan, it is clear that policy SP2A(b) specifically refers to the development limits as defined on the extant Local Plan Policies Map and which continues to form part of the development plan pending review through the Site Allocation Plan (SAP).
12. The Council is currently progressing its SAP and has recently completed a period of public consultation on the *Pool of Sites* stage, which highlighted that it would be unlikely that there would be significant change to the present development limits. Notwithstanding, this document is not sufficiently advanced and can be given limited weight at this juncture. However, the Hearing was told that whilst the Core Strategy does not set a minimum target for individual DSVs, the overall minimum target for these villages has already been succeeded by a substantial margin.
 13. As part of the SAP process, the Council published a Designated Service Villages Growth Options Report in June 2015. This document included three growth scenarios for each DVS based on firstly, a proportionate dispersal across all DSVs; secondly, distribution based on services and accessibility and; thirdly, growth based on avoiding Green Belt release.
 14. The Council argues that its approach in setting numerical levels of growth scenarios is consistent with the limited growth ambitions for DSVs set out in the Core Strategy and considered necessary to support rural sustainability. A table was provided by the Council that sets out the total number of completions and outstanding consents for each of the eighteen DSVs and then comparing these against the numbers envisaged under each of the three scenarios. The Council acknowledges that the scale of the appeal proposal itself would not necessarily be out of kilter with any of the predicted growth scenarios for the village and cumulatively alongside existing commitments would be consistent with the identified growth for Hemingbrough.
 15. In addition, from both the evidence and listening to the various comments from interested parties at the Hearing, I have no doubt that there are a range of services and facilities in the village, including a primary school, a parish church, two pubs and a shop while there are limited bus services into Selby and Goole. In this regard, there is a degree of acceptance that the village is a sustainable location for some growth. Accordingly, given its close proximity to Selby, I have no reason to believe that a development of up to 25 dwellings in the village would not complement the continued growth of the main town of Selby and continue to bolster the sustainability of this village.
 16. Given the above context, the appellant argues strongly that Government policy that is directed towards significantly boosting housing supply is particularly relevant to this appeal. However, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine this appeal in accordance with the development plan unless material considerations indicate otherwise. This is clearly set out in paragraphs 196 and 197 of the Framework.
 17. To my mind, the Council has a robust planning policy *direction of travel*, including the call for sites process forming part of the SAP document. Whilst my attention was drawn to a recent planning approval for a site located outside

the settlement boundary elsewhere in Hemingbrough (local planning authority Ref. 2017/0235/FUL), I would concur with the Council that this was for a more modest proposal taking place within the extensive residential curtilage of an existing dwelling rather than breaking out into clear open countryside. Whilst the appellant argues that the rate of housing delivery during the early plan period in Hemingbrough has been comparatively modest, there is no evidence to suggest that delivery is entirely dependent upon supporting development proposals on greenfield sites outwith the settlement limits.

18. Given the acceptance that the site lies outside the defined settlement limits and that none of the exception circumstances set out in policy SP2A(c) would apply, I have to conclude that allowing this appeal would seriously undermine the spatial dimensions of the development plan.
19. Having regard to the above factors and as the site is very clearly in open countryside, the proposed development would directly and unacceptably conflict with Policies SP2A and SP5 of the Core Strategy and thereby seriously undermine the established settlement hierarchy. Consequently, it would not accord with the development plan.

Character and appearance

20. The appeal site comprises two conjoined fields that are relatively narrow but elongated and bound by a low hedgerow on their southern boundaries. It occupies a position at a transition where the stark southern urban fringe of the village abruptly changes to flat arable land and open countryside. The suburban housing estates forming the southern fringe of Hemingbrough at this point represent a prominent and somewhat harsh appearance when viewed from open countryside to the south.
21. The two fields are of limited landscape value in themselves but form part of the Wharfe Ouse River Corridor landscape character area as defined in the Council's Landscape Assessment of Selby District (1999). The area is described as an essentially rural landscape, with a relatively remote and isolated character with the site classed as flat open farmland. The Council has published the Draft Settlement Setting Landscape Assessment (the 'DSSLA') in 2015 to inform the recent *Pool of Sites* consultation. The DSSLA describes the area south of Hemingbrough as slightly undulating, commonplace arable land with a few significant hedgerows and occasional trees. The DSSLA opines that the overall landscape character of this area is of high sensitivity to development due to the arable land use and open landscape with extensive views.
22. The appellant maintains that the development of the appeal site would offer the opportunity to provide a substantial landscaped edge to the development, which would have a beneficial effect when compared to the harsh urban form of development along the southern boundary to the village. The Council's contention that the southern limits to the village have a well-defined and defensible hard boundary that should be viewed as a positive aspect is difficult to reconcile given the very hard edge that presently exists. The present hedgerows provide a degree of containment to this site whilst with careful landscaping of the kind described to me by the appellant, I have no doubt that a softer edge to the village could be achieved and, as the appellant pointed out, could be protected through use of Tree Protection Orders. Thus, I do not find that a well-designed housing scheme that is properly landscaped would

necessarily diminish the open character of the wider landscape and rather as the appellant suggests, could offer a gentler transition between open countryside and the urban edge.

23. Accordingly, I find that the appeal site contained by existing hedgerows does not make a significant contribution to the setting of the wider landscape area and its development alongside substantial landscaping would have a beneficial effect on the setting of the village when viewed from the public rights of way to the east and from the open countryside to the south. No conflict therefore arises with policies SP18 and SP19 of the Core Strategy or with policy ENV1 of the Local Plan which collectively seek, amongst other things, to protect the high quality and local distinctiveness of the natural and man-made environment.

Planning Obligation

24. As stated above a signed section 106 agreement was submitted prior to the Hearing securing affordable housing provision, on-site recreational space and a financial contribution towards the costs of providing waste and recycling facilities. The covenants are not in contention in this appeal; however, as explained above, the appellant believes that these should be dealt with through planning conditions rather than the formal agreement. I see no reason why I need adjudicate on this matter given that I am dismissing the appeal. The agreement has been signed and the Council has provided a statement to the effect that the agreement is CIL-compliant. I am also satisfied that the agreement meets the tests laid down in regulation 122 of the Community Infrastructure Regulations 2010. I have therefore taken the section 106 agreement into consideration in reaching my decision.

Other matters

25. Local representations were received on a number of technical issues, including the ability of the local highway infrastructure to accommodate the additional traffic flows that would be created by the development, the propensity of the area to be at risk from flooding and the likely presence of archaeological features.
26. I observed that the free flow of traffic on Main Street leading through the village is hampered by parked vehicles and that Mill Lane, the principal access to the site, narrows considerably. The local Parish Councillor explained the efforts that have been made locally to persuade the County Council to introduce parking restrictions along Main Street. The Council with the support of the local highway authority believes that the local highway network can accommodate the additional traffic from this development and that subject to suitable planning conditions, no highway objections can be sustained. I would agree with this assessment.
27. In terms of flood risk, a previous application that included an additional part of the same field to the west was refused permission following an adverse flood risk assessment. The application site was amended as part of the appeal proposal to exclude land not falling within flood risk Zone 1 as having a low risk of flood. There is no evidence before me to suggest that I should take a different view on the matter of flood risk and I also note the favourable response to the planning application by the local drainage authority on such matters.

28. The local Parish Councillor raised the issue of archaeology and gave an interesting account of the history of the once navigable section of the Ouse before it silted up and changed its course. However, neither party raised this as an issue whilst there appears to be no archaeological records available that would indicate any sensitivity of this nature in immediate area of the appeal site.

Conclusions

29. The parties agreed that the Council is presently able to demonstrate that it has a five year supply of deliverable housing sites and that by virtue that relevant policies of the development plan are up-to-date, paragraph 49 of the Framework is not engaged. I acknowledge that the Framework seeks to significantly boost the supply of housing. However, paragraph 47 explains that this should be achieved through a plan-led system, particularly where a five year housing land supply exists. Given that the Council appears to have only very recently fully engaged with the local community through its *Pool of Sites* stage of the SAP, it is anathema to undermine these efforts by allowing developments to come forward through ad hoc development management decisions.
30. That said there are benefits, both socially and economically associated with the appeal development. Such benefits are not insubstantial and would flow from the additional market and the policy-compliant affordable housing proposed to be provided in accordance with policy SP9 of the Core Strategy. There would also be modest environmental gain through the creation of a softer edge to the village; however, this would be outweighed by the harm to the locational strategy that underpins the Core Strategy. The proposal by virtue of its inappropriate countryside location and unplanned nature would not therefore fulfil the environmental role of sustainable development when considered overall.
31. There are no considerations that are of such weight that would warrant a decision other than in accordance with the development plan and Framework. For these above reasons and having regard to all other matters raised, I conclude that this appeal should be dismissed.

Gareth W Thomas

INSPECTOR

APPEARANCES:

For the appellant:

Christopher C Kendall Dip TP MRTPI

Town Planning Consultant

Rachel Bartlett

Planning Consultant

For the Council:

Keith Thompson BA(Hons) MPlan MRTPI

Senior Planning Officer

Clare Dickinson BA(Hons) DipTP MRTPI

Principal Planning Officer

Yvonne Naylor

Principal Planning Officer

Interested Persons:

Cllr Jan Strelczenie

Hemingbrough Parish Council

Peter Parrish

Local Resident

Carole Gelder

Local Resident

Richborough Estates

LIST OF DOCUMENTS:

- Document 1: Appeal decision APP/F2605/W/17/3183968
- Document 2: Appeal decision 16/01663/APP (Scottish Government)
- Document 3: Appeal decision APP/N2739/W/17/3181460
- Document 4: Committee Report on application LPA Ref. 2017/0235/FUL
- Document 5: Further application for costs by Selby District Council

Richborough Estates