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## Appeal Decision

Site visit made on 19 February 2019

by **K Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 June 2019

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**Appeal Ref: APP/E2734/W/18/3213232**

**Land comprising field at 438887 468593, Church Lane, Kirby Hill, North Yorkshire**

- 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 Future Habitat Ltd against the decision of Harrogate Borough Council.
  - The application Ref 17/04318/OUTMAJ, dated 8 September 2017, was refused by notice dated 12 June 2018.
  - The development proposed was originally described as '*outline application with details of access (all other matters reserved) for residential development.*'
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Future Habitat Ltd against Harrogate Borough Council. This application is the subject of a separate Decision.

### Preliminary and procedural matters

3. The application was made in outline with all matters reserved except for access and initially proposed up to 87 dwellings on the site. This was subsequently revised down to 50 dwellings and it is on this basis that the Council determined the application. I have considered the appeal on the same basis, regarding the site layout plans as being for indicative purposes only.
4. During the course of the appeal, the Council provided in evidence a letter containing interim comments of the examining Inspector for the emerging Harrogate Local Plan (EHLP) and an updated position in respect of its housing land supply. The appellant has been given the opportunity to comment on these documents.
5. On 19 February 2019, the Government published its Housing Delivery Test (HDT) results alongside the publication of an updated revised National Planning Policy Framework (The Framework). The main parties have had the opportunity to comment on the updates to this document.

### Background and Main Issue

6. The appeal scheme proposes 50 dwellings on a greenfield site to the north of the village of Kirby Hill. The Council refused permission on the basis that '*the site lies in an unsustainable location and the social and environmental harm*

*resulting from residential development outweighs the benefits of delivering 50 dwellings, thereby being contrary to paragraph 14 of the NPPF.*<sup>1</sup> The Council in its appeal statement clarifies that the 'social and environmental harm' in this case refers to the location of the development in terms of access to services and facilities, harm to landscape character and due to the scale of the proposed development, noise conflict between existing agricultural and commercial uses and the proposed dwellings and loss of agricultural land.

7. Based on this, therefore, I consider the main issues in this case are firstly, whether the site represents an appropriate location for housing, having particular regard to national and local planning policies, access to services and facilities and the effect on the character and appearance of the area, including landscape character, and loss of agricultural land; and secondly, the effect of noise on the living conditions of prospective occupants.

## **Reasons**

### *Whether appropriate location for housing*

#### *Policy context*

8. The development plan for the area consists of the Harrogate Local Development Framework Core Strategy (2009) (the CS) and the saved policies of the Harrogate District Local Plan<sup>2</sup> (the HDLP). The Council's reason for refusal does not cite conflict with specific development plan policies. Nevertheless, the starting point for determining the appeal is the development plan, and I have been supplied with relevant policies taken into account by the Council.
9. Policy SG1 sets out the strategy for settlement growth in the district. The hierarchy of settlements is identified under Policy SG2, which states that the purpose of drawing development limits is to allow sustainable growth within those settlements that have the best access to jobs, shops and services.
10. Kirby Hill is designated as a Group C settlement under Policy SG2. These are defined as smaller villages with more limited access to jobs, shops and services. The policy sets out that these settlements will accommodate only very limited growth mainly in the form of suitable development within their existing built up areas. The appeal site lies adjacent to, but outside, the development limits of Kirby Hill, and therefore lies within the open countryside for planning purposes.
11. Policy SG3 states that there will be strict control over new development in the countryside in accordance with national policy protecting the countryside. The policy lists certain forms of development which are encouraged, which does not include market housing. In terms of national policy, the Framework indicates that isolated homes in the countryside should be avoided unless certain circumstances apply. However, the proposed dwellings would be located adjacent to the existing settlement and would not therefore amount to 'isolated homes', in my judgement. Therefore, the proposal would not conflict with Paragraph 79 of the Framework.

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<sup>1</sup> The NPPF as referenced by the Council at the time of its decision is that published in March 2012.

<sup>2</sup> Plan adopted February 2001 and the Selective Alteration - Adopted May 2004, policies saved 17 September 2007

12. The Framework, however, states at Paragraph 170 that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside. Policies EQ2 and SG4 of the CS and saved Policies C2 and HD20 of the HDLP together seek to protect landscape character and ensure development is appropriate to the form and character of the settlement and well-integrated with and complementary to the spatial qualities of the local area. I turn, therefore, to consider the effect on landscape character.

*Landscape Character*

13. The site is located within the Dishforth and Surrounding Farmland Landscape Character Area (LCA), which is a large scale arable landscape that extends along the A1 corridor north of Boroughbridge with scattered and diverse development punctuating the undulating, uniform and open agricultural landscape.
14. I note that the appeal site was promoted as a site allocation in the EHLP. The summary evidence base acknowledged the 'harsh urban edge' which exists to the village but considered that the sensitivity of the landscape was 'high/medium' and its capacity for development was 'medium to low' as the scale and type of development proposal could not be accommodated 'without detriment to landscape character and visual amenity and the opportunities for mitigation are limited.' The site was not taken forward as an allocation.
15. The appellant has prepared a Landscape and Visual Impact Assessment (LVIA) which assesses the sensitivity of the appeal site as 'medium', based on surrounding negative features including development at Dishforth Airfield and the A1(M) corridor, and the low lying nature of the site, its open views, and lack of high sensitivity features. On this point, the Council's Landscape Architect is in agreement. The LVIA indicates there would be a minor loss of hedgerow to Leeming Lane to provide the access and the development would result in a 'small scale suburbanising change' to the LCA. The LVIA concludes that the effect on landscape character would be 'moderate adverse' to this part of the LCA, and 'minor/moderate adverse' to the overall LCA.
16. In terms of visual impact, the Council's Landscape Architect disagrees with the LVIA conclusion that users of the public right of way would be of medium sensitivity, given their focus on enjoying the landscape and their proximity to the development. I agree with this analysis and consider these receptors, along with residential receptors on Manor Drive and to the front of The Grange, are highly sensitive to change.
17. The site is in an exposed position to the north of the village given the open terrain surrounding it, and the low hedgerow to the roadside boundary. On approach from the north, the settlement boundary to the rear of properties on Manor Drive presents an immediate transition between the built form and open countryside. However, such sharp edges to development exist on all sides of the village which serve to give it a defined and compact layout.
18. The proposal would result in development where there presently is none and would fundamentally change the rural character of the site, resulting in an intrinsic loss of open countryside to a suburban form of development. The proposal would extend the village into the countryside in a conspicuous manner as the whole of the development would stand beyond the existing defined edge

to the settlement at the rear of Manor Drive and would be prominent in views from all sides due to the site's openness.

19. I acknowledge that mitigatory landscaping is proposed to the outer reaches of the site to provide a softer transition between the built form and countryside beyond. This would reduce the severity of the effect on landscape character from certain viewpoints. However, in the short to medium term, and even in the longer term, the permanent change to the character of the site would remain adverse, particularly for visual receptors on Manor Drive and the Grange and users of the public footpath running alongside the site boundary, for whom the outlook over open countryside would be irrevocably changed, and for which the appellant concedes that effective mitigation could not be provided given the proximity of the development to these receptors.
20. I find, therefore, that the proposal would result in harm to the landscape character of the area. As such, the proposal would be in conflict with CS Policies SG4 and EQ2 which, subject to the need to plan for new greenfield development, seek to protect the landscape character of the District. There is an implicit balancing exercise required in applying these policies and it is consistent with the Framework, which also requires a balance to be struck between permitting development and the recognition of the intrinsic character and beauty of the countryside. I therefore accord these policies significant weight. The proposal would also conflict with saved Policies C2 and HD20 of the HDLP, which do not incorporate the balancing requirement of the Framework but nevertheless attract some weight.

*Access to services and facilities*

21. Kirby Hill offers a limited number of facilities, including a public house, primary school and church, but lacks many of the basic services required by residents to meet day-to-day needs, such as shops. As such, residents must travel outside the village for many services. Boroughbridge, located some 1.7 km south, offers a wide range of services and is likely to be the first option for most residents, whilst the larger settlements of Ripon, Harrogate and York offer further shopping and leisure options, and are likely to be commuting destinations for work.
22. There is a bus service with stops close to the appeal site, however, this offers a very limited once-a-day service between Boroughbridge and Ripon, with another single service to and from Boroughbridge on a Thursday. The appellant has proposed a financial contribution towards increasing the frequency of the bus service and a Green Travel Plan designed to encourage reduction in car use by up to 10%; however, these measures would be for a limited period and would, in my view, have little practical effect in reducing what would still be an overwhelming reliance on the private car. I accept that services in nearby Boroughbridge could be reached on foot or bicycle; however, given the distance and gradient of the hill, I am doubtful that residents would undertake such journeys regularly to fulfil day-to-day needs, particularly in poor weather. Reliance on the private car would also hinder social integration between new and existing residents in the village.
23. Given these factors, I find that the dwellings would be within a location with poor access to services and facilities. Whilst I accept that the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, it also states that significant development

should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, and that housing should be located where it will enhance or maintain the vitality of rural communities. Given my findings above, there would be conflict with the Framework in these respects.

*Scale of development*

24. In terms of scale, the Council points to the proposal increasing the population of the village by some 31%, based on census data from 2011 and average household size of 2.4 persons, and which appears to take the development of 34 dwellings under construction at St Johns Walk into account. The appellant does not appear to challenge these figures. From my observations on the ground, I found the village to be small in scale, compact in layout and with an established village character, with limited traffic and a quiet atmosphere. I also observed it to be physically separate to Boroughbridge and Langthorpe. The addition of up to 50 dwellings would be a significant increase in scale, which would not amount to 'very limited growth' envisioned for the village by Policy SG2, but would introduce a substantial suburban form of development in an outlying position which would fail to reflect the village character of the settlement, contrary to the requirements of Policy SG4 of the CS.

*Loss of agricultural land*

25. The loss of 3.5 hectares of Grade 1 best and most versatile agricultural land would not be significant in terms of the Framework, and not sufficient in itself to justify withholding planning permission, but it would result in a minor degree of economic harm to the local economy.

*Conclusions on first main issue*

26. Taking these considerations together, I find that the proposal would not represent an appropriate location for housing, due to the harm which would be caused to landscape character, the adverse effect of the scale of development on the character of the village, the poor access to services and facilities, and to a lesser extent, the loss of Grade 1 agricultural land. The proposal would therefore conflict with Policies SG3, SG4 and EQ2 of the CS and Saved Policies CS2 and HD20 of the LP, as well as the Framework which seeks recognition of the intrinsic character and beauty of the countryside.
27. The EHLP underwent its examination in public in January 2019. In light of the aforementioned letter from the examining Inspector in March 2019, policies of the EHLP may yet be subject to change, and therefore I afford them only limited weight at this stage. That said, the Council has not sought to rely on any emerging policies in making its case at appeal.

*Effect on living conditions of prospective occupants*

28. The Council, whilst acknowledging that the precise layout of dwellings would be addressed at reserved matters stage, raises the potential for conflict between occupants of the proposed dwellings and existing noise-generating operations at Manor Farm and the haulage site to either side of the site. The Council's Environmental Health Officer did not object to the scheme following the undertaking of noise assessments, concluding that mitigation measures could be employed to provide a reasonable level of protection. I note the concerns of interested parties that the noise assessments were not carried out at a time of



year when the grain dryer at the farm is in operation and that, as a consequence, the assessments do not reflect the most adverse situations. However, there are existing dwellings at similar proximity to the grain dryer on Manor Drive, and I am not aware of noise complaints being made by these residents. Moreover, the indicative site plan shows the site is sufficiently spacious to accommodate the proposed dwellings in a low density layout, with sufficient room for adjustments to the layout as advised by the Environmental Health Officer, and scope for noise insulation to be included in the detailed design of the dwellings, so as to satisfactorily address concerns over noise.

29. Therefore, based on all I have seen and read, I am not persuaded that there would be harm to future occupants' living conditions and I do not find conflict with Policy SG4 of the CS or Policy HD20 of the HDLP, which require that visual, residential and general amenity should be protected and where possible enhanced.

### **Other Matters**

30. The Council did not make findings of harm with respect to highway safety, ecology, drainage or public rights of way, subject in certain cases to recommended conditions. I have considered the concerns raised in relation to these matters by interested parties, including descriptions of flooding and drainage issues on Leeming Lane. However, taking all of the evidence into account, I do not reach different conclusions to the Council in respect of these matters. The absence of harm in these respects is, however, a neutral matter weighing neither for nor against the proposal.
31. The matters of layout, landscaping, appearance and scale are reserved for future consideration. As such, they are not relevant to my considerations, beyond that I find the site is capable of delivering an appropriate density of development and that in principle there are sufficient space and separation distances to existing development to create satisfactory living conditions for existing and prospective occupants.
32. The Council considered the effect of the proposal on the settings of nearby heritage assets, including the Grade I Church of All Saints. I have had due regard to the statutory duty<sup>3</sup> to pay special attention to the desirability of preserving the setting of a listed building. In none of these cases did the Council identify harm to the settings of these heritage assets, and from all I have seen and read, I have no reason to reach different conclusions.
33. Reference is made to a subsequent application by the same appellant to the Council on the same site for a scheme of up to 31 dwellings. I do not have full details of this scheme, nor have I been advised at the time of this Decision that the Council has determined the application. Therefore, this application is not decisive in respect of this appeal, which I have considered on its own merits and on the basis of the evidence before me.

### **Planning Obligations**

34. A signed and dated unilateral undertaking has been submitted by the appellant. This provides for on-site affordable housing and financial contributions in respect of a traffic regulation order, highway safety improvements on the B6265 road, monitoring of the Travel Plan, provision of an off-peak bus service

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<sup>3</sup> Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

between the appeal site and Boroughbridge and provision of education places arising as a result of the development.

35. I am satisfied that each sought obligation meets the three tests set out in Paragraph 56 of the Framework for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations (2010). Further, I am satisfied that the sought contributions comply with CIL Regulation 123, where applicable. As a result, I have taken the completed agreement into account.

### **Planning Balance**

36. At the time of its decision in June 2018, the Council accepted that it could only demonstrate a 4.5 year supply of deliverable housing sites, and that Paragraph 14 of the 2012 Framework (as it was at the time) was engaged. Subsequently, the Council has produced revised figures, firstly in its statement of case where it asserted that it could demonstrate a supply of 5.56 years as of April 2018. Then, the Council submitted an updated position as of 1 April 2019, where it asserts a supply of 6.89 years. The Council's figures are not directly challenged by the appellant; however, the appellant states that the figures are still open to scrutiny in respect of the government's objective to deliver additional housing, and points to the fact that the latest figures have not been tested as part of the local plan examination. I acknowledge this; however, I have no substantive evidence to counter the Council's stated housing position.
37. Notwithstanding this, the Council accepts that the policies relevant to the delivery of housing, namely Policies SG1, SG2 and SG3 of the CS, are based on outdated housing requirement projections as to achieve the latest stated housing supply requires the contribution of sites outside existing settlement boundaries. Therefore, these policies are out-of-date for the purposes of the Framework. Paragraph 11 of the Framework is engaged and the presumption in favour of sustainable development applies unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
38. The proposal would deliver distinct benefits, principally the provision of up to 50 dwellings which would support the national objective to increase the supply of housing. Whilst the Council indicates it can demonstrate a five year supply of deliverable housing sites, the proposed dwellings still would make a considerable contribution to achieving and maintaining that position. The provision of up to 40% affordable dwellings is a further important benefit which would address a recognised need in the Council's area. These are significant material considerations in favour of the proposal.
39. In addition, there would be moderate economic benefits from the construction of the dwellings, though this would be a temporary benefit, and from subsequent use of local services by future residents. There would be minor environmental benefits from additional tree planting across the site.
40. Set against these benefits, there would be significant environmental harm, due to reliance on the private car for transport, the intrinsic and permanent harm to landscape character, and to the character of the village through the scale of the development. The loss of Grade 1 best and most versatile agricultural land would be a minor economic harm.

41. In my judgement, these adverse impacts of development would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. As such, the scheme would not amount to sustainable development.

**Conclusion**

42. The Framework does not change the statutory status of the development plan in terms of decision making. I conclude that the identified harm arising from the proposal results in conflict with the development plan that is not outweighed by the other material considerations in this case.

43. The appeal is therefore dismissed.

*K Savage*

INSPECTOR

Richborough Estates