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## Appeal Decision

Hearing held on 8 May 2019

Site visit made on 8 May 2019

**by Darren Hendley BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th June 2019

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**Appeal Ref: APP/G2713/W/18/3211030**

**Land off Stokesley Road, Northallerton DL6 2TS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Sharpley, Yorvik Homes Ltd against the decision of Hambleton District Council.
  - The application Ref 17/01394/FUL, dated 22 June 2017, was refused by notice dated 9 April 2018.
  - The development proposed is a development of 17 no. 2, 3 4 and 5 bedroom new build dwellings and associated garaging, car parking and private amenity space, to be served via two access ways from Stokesley Road.
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### Decision

1. The appeal is allowed and planning permission is granted for a development of 17 no. 2, 3 4 and 5 bedroom new build dwellings and associated garaging, car parking and private amenity space, to be served via two access ways from Stokesley Road at land off Stokesley Road, Northallerton DL6 2TS in accordance with the terms of the application, Ref 17/01394/FUL, dated 22 June 2017, subject to the conditions in the attached schedule.

### Procedural Matters

2. During the course of the appeal, the updated Revised National Planning Policy Framework (2019) (Framework) was published. Parties have referred to this document in their appeal submissions, including at the Hearing. Accordingly, I have considered it in my decision.
3. Alternative proposals are before me to consider in relation to the provision of affordable housing, as was set out by the parties at the Hearing. These are:
  - (i) 4 number affordable housing units to be provided on site; and
  - (ii) 7 number discounted market sale affordable units with a 30% discount from market prices to be provided on site, plus a commuted sum towards affordable housing of £60,000.
4. At the Hearing it was confirmed that the Proposed Site Layout plan (ref: Y81:953:06 Rev B) incorrectly shows that 5 affordable housing units are to be provided. Hence, I have considered this plan in my decision only as far as it shows matters apart from the affordable housing. For similar reasons, I have not considered the Proposed Site Layout – Affordables plan (ref: Y81:953.40)

and the same applies as regards the Proposed Site Layout plan (ref: Y81:953:05) which appears to show the original layout which has now been superseded by that on drawing(ref: Y81:953:06 Rev B). I have also dealt with the Proposed Streetscape A-A plan on an indicative basis.

5. Subsequent to the Hearing, certified copies of the executed planning obligations were submitted which reflect the alternative proposals for the provision of affordable housing. I have considered these documents in my decision.

### **Main Issue**

6. The main issue is whether the proposal makes adequate provision for the need for affordable housing.

### **Reasons**

#### *Background*

7. The appeal site comprises a grass field which lies on the western side of Stokesley Road, approximately 1 km north of Northallerton town centre. A mature hedgerow runs along the length of the Stokesley Road boundary, apart from a gated field access. Trees and vegetation are also found along the remaining boundaries of the site, along with domestic type boundary treatment. A beck runs in close proximity to the boundary to the west. The site abuts established residential properties to the south on Stokesley Road and along part of its rear boundary.
8. The site forms part of the NM5B housing allocation under the Council's Local Development Framework (LDF) Allocations Development Plan Document (2010) (Allocations DPD). Parts of the allocation on adjacent land to the north and west of the site are already developed for housing, or nearing completion. The allocation forms part of a larger strategic site for mixed development known under the Allocations DPD as the Policy NM5 North Northallerton Area.
9. Policy CP9 of the Council's LDF Core Strategy (Core Strategy) (2007) sets out to achieve a 40% proportion of affordable housing on housing developments of 15 or more dwellings (or sites of 0.5ha or more) that come forward in Northallerton. The target is stated as a guide and that the proportion, where appropriate, will be indicated for each site under the Allocations DPD. Policy NM5B reaffirms that 40% should be affordable. Policy CP9 and the supporting text to Policy NM5 acknowledge that the target will be subject of negotiation, including a consideration of economic viability.
10. Policy DP15 of the LDF Development Policies Development Plan Document (2008) (Development Policies DPD) sets out a number of criteria for consideration, where a housing development makes provision for affordable housing in the context of Policy CP9. These concern affordability, perpetuity arrangements, local connections, a balance in the different types of affordable housing provision and integration into the larger development.
11. The 4 affordable housing units to be provided on site is the Council's position and the appellant's less favoured position. The 7 discounted market sale affordable units and the commuted sum is the appellant's favoured position, and where the Council has concerns.

*Four affordable housing units*

12. Subsequent to the Council's decision, the appellant provided additional information concerning the abnormal costs that are predicted to be associated with the development of the site, related to the need to use piled foundations. In considering these costs, the Council adjusted their position in that 4, rather than 6, affordable housing units would need to be provided.
13. Based on the evidence before me, I have no reason to dispute these abnormal costs and, hence, find that there is sufficient justification for the 4 affordable housing units. Whilst this would mean the provision would be lower than the 40% targets set out in Policies CP9 and NM5B, as I have set out above, both policies permit a consideration of viability in negotiating affordable housing provision. The same applies when standard inputs to viability assessment under the Planning Practice Guidance: Viability (PPG) are considered. In this case, such a consideration of viability justifies the provision of 4 affordable housing units.
14. The planning obligation which relates to the 4 affordable housing units binds the owner to covenants with the Council. It states that the affordable housing units are to be rented and intermediate units. This accords with the tenures which are supported by the development plan policies, as well as meeting the definition of affordable housing in the Framework. It meets the requirements of a planning obligation in order for the proposal to gain permission and complies with the tests under the Framework.
15. In these circumstances, I conclude that 4 affordable housing units would make adequate provision for the need for affordable housing. In this regard, the proposal would comply with Policies CP9, DP15 and NM5B in relation to their approach to the provision of affordable housing, including viability. It would also accord with the Framework in respect of making provision for where there is an identified need for affordable housing.

*Seven discounted market sale affordable units and commuted sum*

16. The definition of affordable housing in the Framework includes discounted market sales housing which it states is that sold at a discount of at least 20% below market value, amongst other considerations. This also reflects the Government's Housing White Paper which sought to increase affordable home ownership, as well as the role of smaller housebuilders. The Framework also makes it clear that where a need for affordable housing is identified, it is for planning policies to specify the type of affordable housing required.
17. Discounted market sale housing does not fall within the affordable housing development plan policies, which concern rented and intermediate affordable housing types. Clearly, the development plan policies predate the Framework and how they deal with this matter needs to be considered within this context, as well as that the studies on need which underpin these development plan policies are of a dated nature. However, the more recent Council's Housing and Economic Development Needs Assessment (2018) (HEDNA) does consider discounted market sale housing.
18. The HEDNA sets out that the costs of buying in the Council area are relatively expensive, when house prices and income are considered. Consequently, it finds that when market sale homes are discounted by 20% they would not

meet affordable need. Although the 30% discount which the appellant is offering is in excess of the minimum under the Framework, the HEDNA sets out that it would only make discounted market sale housing as affordable as intermediate housing for 1 bedroom properties. The proposed dwellings are, though, 2 bedroom and upwards.

19. As a result, I find the evidence on affordability in the HEDNA to be persuasive on discounted market sale housing, when the proposal is considered. I am concerned that it would not be meeting a genuine affordable housing need. This would not be addressed, or outweighed, by the proposal undoubtedly attracting interest by offering such a discount to those who would be able to afford the price.
20. The HEDNA does not have the standing of planning policy and I understand from the Hearing that it is yet to be examined as part of the evidence base for the preparation of the Council's emerging Local Plan. Nevertheless, it provides what can be considered to be an up to date analysis of housing needs in the Council area, and as there is limited alternative evidence of equivalent detail and purpose before me, I attach significant weight to its findings.
21. The appellant considers that the HEDNA downplays the potential affordability of discounted market sale housing, including with regard to the methods of assessment it undertakes. For the purposes of considering the proposal before me, though, it provides a sufficient and robust level of assessment and its findings are straightforward in this regard. Similarly, it provides a reasoned assessment of the comparison of affordability with shared ownership and whilst the appellant considered at the Hearing this may be a more affordable option, the evidence in the HEDNA does not bear this out.
22. There is limited substantive evidence before me concerning whether or not there is a lack of discounted market sale housing across the allocation and, as such, whether the proposal would diversify affordable housing types and home ownership. In any event, such a situation may be more reflective of the findings of the HEDNA in that other affordable housing types may effectively address need to a greater degree. In relation to the amount of affordable housing across the NM5 area, this is not for my consideration as the proposal falls to be determined on its own merits, notwithstanding that the Council at the Hearing drew my attention to that the provision of affordable housing on other sites was set against providing a new link road. The same applies as regards the various appeal decisions and other developments that I have been referred to elsewhere, with the evidence I have before me.
23. At the Hearing, the appellant confirmed that the commuted sum payment was, in effect, the surplus after the discounted market sale units had been accounted for. The appellant also stated that this amount could be utilised on site, which is the expectation under the Framework as regards how affordable housing is to be provided. This does not, though, address my concerns over the proposed discounted market sale housing. As a consequence, I also find the associated planning obligation does not meet the tests under the Framework.
24. I conclude that the discounted market sale affordable units with a 30% discount from market prices and a commuted sum towards affordable housing of £60,000 would not make adequate provision for the need for affordable housing. In this regard, the proposal would not comply with Policies CP9, DP15

and NM5B in relation to their approach to the provision of affordable housing, and so, in my view, it would not meet the 40% target. It would not accord with the Framework for similar reasons.

*Developer Return and Other Affordable Housing Matters*

25. In respect of viability, under the PPG, the only matter which is in dispute between the parties is the level of developer return. There was considerable debate at the Hearing in relation to what might be a reasonable return, the role of the banks, the risks and the effect of finance on the size of the appellant's housebuilding business. I have also considered the views on the viability evidence submitted, both prior to the Hearing and at the Hearing by way of the Align Property Partners Appraisal Summary document submitted by the Council.
26. The Council's concerns on developer return appear to relate principally to the 4 affordable housing units. However, as the Council now accept this way of providing the affordable housing, it is not apparent what bearing the developer return would have in this regard. The appellant also does not suggest that providing the 4 affordable housing units would make the scheme unviable, albeit this is not the preferred option.
27. Likewise, as the dispute over the discounted market sale affordable units centres on whether or not this would meet a genuine affordable need, it is not evidently impacted by the dispute over the level of developer return. In these circumstances, it is not the role of my decision to make any greater pronouncement on what is deemed to be an acceptable level of developer return on affordable housing. It is not a matter which alters my decision.
28. With regard to what weight can be apportioned to the development plan policies, whilst they predate the Framework, there is flexibility in these policies as regards viability and the 40% target they set. This is evident through the Council's decision to accept the 4 affordable housing units because of the abnormal costs. The definition of affordable housing types under the Framework is broader than the policies, although the Framework is clear this depends on the planning policies themselves. This does not mean that discounted market housing is to be excluded without consideration but rather this would depend on whether this would meet a genuine affordable housing need, which in this case counts against the proposal. The policies attract significant weight in my decision.
29. The Council's Affordable Housing Supplementary Planning Document (2015) operates on a similar basis to the planning policies which it expands upon and so it does not change my views.
30. There is agreement between the parties that policies in the emerging Local Plan should attract limited weight. The appellant has referred to a lower target on sites for affordable housing under a draft policy and has also drawn my attention to the HEDNA in this respect. In any event, the Council has accepted that a lower amount of affordable housing would be provided on this site than the current target, and so the proposed approach in the emerging Local Plan only carries limited weight in my decision.

## Other Matters

31. The proposal would give rise to positive economic impacts and it would increase housing supply, mix and delivery. When the size of the development is considered, these benefits attract moderate weight in its favour.
32. The proposed dwellings would appear in keeping with their surroundings, in character and appearance terms. The retention of hedgerows and vegetation will assist in this respect and their maintenance can be achieved by way of a planning condition. With the positioning of the proposed dwellings and the separation distances to the neighbouring residential properties, the effect on the living conditions of the occupiers would not be unacceptable. Whilst the site is undeveloped at present and local residents will experience a changed environment, as I have set out, the site forms part of a housing allocation.
33. Drainage information submitted during the planning application demonstrates that the site can be drained satisfactorily and in order to minimise flood risk. The Highway Authority did not object to the planning application on highway safety grounds and I see no reasons to disagree with the proposed access arrangements onto Stokesley Road and the likely traffic generation. Impacts in relation to land contamination, air quality and nature conservation would also not be unacceptable, including by way of the use of planning conditions. These matters attract neutral weight.

## Conditions

34. As well as the time limit condition (1), I have imposed a condition in the interests of certainty concerning the approved plans (2). I have also imposed conditions in the interests of public health concerning land contamination (3), highway safety and the free flow of traffic (4 and 7) and in order to encourage the use of sustainable modes of transport (5 and 6).
35. I have also applied conditions concerning construction matters in the interests of protecting the living conditions of the nearest residents and for highway safety reasons (8), and to provide for satisfactory drainage and to minimise the risk of flooding (9 to 11). Conditions are also imposed in the interests of protecting the character and appearance of the area (12, 13, 14), and to protect the living conditions of the nearest residents (15).
36. Where I have applied pre commencement conditions these are required given they need to be addressed by the start of the construction period and with the site circumstances. The Statement of Common Ground sets out there is agreement from the appellant to these conditions.
37. Where I have altered the wording of the conditions put forward, I have done so in the interests of precision, in particular in relation to highway matters, and without changing their overall intention.

## Conclusion

38. The proposal would not make adequate provision for the need for affordable housing when the 7 discounted market sale affordable units and the commuted sum proposal is considered. The benefits that would arise would not outweigh the harm caused by the proposal in this regard. It conflicts with the development plan and there are no material considerations to outweigh this conflict.

39. The proposal would, though, make adequate provision for the need for affordable housing on the basis of the 4 affordable housing units and, in this regard, it would accord with the development plan. The associated planning obligation for the 4 affordable housing units is the minimum sufficient to make the proposal acceptable and it is this planning obligation on which my decision is based. Accordingly, the appeal is allowed solely on this basis and subject to the conditions.

*Darren Hendley*

INSPECTOR

Richborough Estates

**APPEARANCES**

FOR THE APPELLANT:

Matthew Gath	Yorvik Homes Ltd
Joe Mawson	Yorvik Homes Ltd
Mark Eagland	Peacock & Smith Ltd
Sophie Bagley	GNEC

FOR THE LOCAL PLANNING AUTHORITY:

Peter Jones	Hambleton District Council
Sharon Graham	Hambleton District Council
Ruth Hindmarch	Hambleton District Council

**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Draft Planning Obligations (2)
- 2 Align Property Partners, Appraisal Summary dated 05/04/2019

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## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Y81:953:01; Existing Site Plan Y81:953.02; Proposed Site Layout Y81:953:06 Rev B excluding where it indicates which units would be affordable; Proposed Site Layout – Boundary Treatment Y81:953.07:Rev B; Boundary Treatments Y81:953:35; Housetype A - Elevations Plots 1-3 Y81:953:11; Housetype A - Plans Plots 1-3 Y81:953.10; Housetype B - Elevations Plots 4 & 5 Y81:953:13; Housetype B - Plans Plots 4 & 5 Y81:953:12; Housetype C - Elevations Plots 10 & 11 Y81:953:15 Housetype C - Plans Plots 10 & 11 Y81:953:14; Housetype D - Elevations Plots 8 & 9 Y81:953:17; Housetype D - Plans Plots 8 & 9 Y81:953:16; Housetype E - Elevations Plots 7 & 12 Y81:953:19; Housetype E - Plans Plot 7 & 12 Y81:953.18; Housetype F - Elevations Plots 6 Y81:953:21; Housetype F - Plans Plot 6 Y81:953:20; Housetype G - Elevations Plot 16 Y81:953:23; Housetype G - Floor Plans Plot 16 Y81:953:22; Housetype H - Elevations Plot 15 & 17 Y81:953:25; Housetype H - Floor Plans Plot 15 & 17 Y81:953.24; Housetype I - Elevations Plots 13 & 14 Y81:953:29; Housetype I - Floor Plans Plots 13 & 14 Y81:953:28; Garage Plans and Elevations Y81:953:30; Double Garage Plans and Elevations Plots 13, 14 & 15 Y81:953:31.
- 3) No development shall be commenced until an assessment of the risks posed by contamination, carried out in line with the Environment Agency's Model Procedures for the Management of Land Contamination CLR11, has been submitted to and approved by the local planning authority. A scheme for the remediation of any contamination shall be submitted and approved by the local planning authority before any development occurs. The development shall not be occupied until the approved remediation scheme has been implemented and a verification report detailing all works carried out has been submitted to and approved in writing by the local planning authority.
- 4) 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:
  - a. Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:
    - the proposed highway layout including the highway boundary
    - dimensions of any carriageway, cycleway, footway, and verges
    - visibility splays to the proposed buildings and site layout, including levels
    - accesses and driveways
    - drainage and sewerage system
    - lining and signing
    - traffic calming measures
    - all types of surfacing (including tactiles), kerbing and edging.

b. 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:

- the existing ground level
- the proposed road channel and centre line levels
- full details of surface water drainage proposals.

c. Full highway construction details including:

- typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths
- when requested cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels
- kerb and edging construction details
- typical drainage construction details.

d. Details of the method and means of surface water disposal.

e. Details of all proposed street lighting.

f. Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.

g. Full working drawings for any structures which affect or form part of the highway network.

h. A programme for completing the works.

The development shall be carried out in full compliance with the approved drawings and details.

- 5) There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works until:

(i) The details of the following off site required highway improvement works, works listed below have been submitted to and approved in writing by the local planning authority:

- Provision of tactile paving
- The widening of the existing footway on the site's frontage on Stokesley Road to a minimum width of 2.0 metres

(ii) A programme for the completion of the proposed works has been submitted to and approved in writing by the Local Planning Authority.

- 6) The development shall not be brought into use until the following highway works have been constructed in accordance with the details approved in writing by the local planning authority:

- The widening of the existing footway on the site's frontage on Stokesley Road to a minimum width of 2.0 Metres

- 7) No dwelling shall be occupied until the related parking and turning facilities have been constructed in accordance with the approved drawing

reference Y81:953:06 Rev B. Once created these parking and turning areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

- 8) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
  - viii) details of the routing of Heavy Goods Vehicles.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 9) Surface water discharge to any watercourse within the Drainage District, will require consent from the Internal Drainage Board and discharge shall be restricted to 1.4l per second per hectare or greenfield runoff. No obstructions are permitted within 9m of the edge of the watercourse without consent from the Internal Drainage Board.
- 10) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 11) No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, other than the existing local public sewerage, for surface water have been completed in accordance with details that have been previously submitted to and approved in writing by the local planning authority. These details shall be carried out prior to the occupation of the development and thereafter maintained.
- 12) No above ground construction work shall be undertaken until details of the materials to be used in the construction of the external surfaces of the development have been submitted in writing to the local planning authority for approval and samples have been made available on the application site for inspection (and the local planning authority have been advised that the materials are on site) and the materials have been approved in writing by the local planning authority. The development shall be constructed of the approved materials in accordance with the approved method.
- 13) The development shall not be occupied until a detailed landscaping scheme indicating the type, height, species and location of all new trees and shrubs and an implementation schedule has been submitted to and approved in writing by the local planning authority. The development

shall be carried out in full compliance with the approved scheme. Any trees or plants which, within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.

- 14) No part of the existing boundary hedge along the boundaries of the site shall be uprooted or removed and the hedge shall not be reduced below a height of 2m other than in accordance with details that have been submitted to, and approved in writing by, the local planning authority. The retained hedges shall then be maintained at a height between 2m and 2.5m or in accordance with the approved details.
- 15) Prior to the commencement of development, other than the formation of the initial access to the site, full details of existing and proposed levels, including cross-sections through the site including existing neighbouring development, shall be submitted to and approved in writing by the local planning authority. Levels shall be taken from a nearby, off-site datum point. The development shall then be carried out in accordance with the approved details.

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