



Appeal Decision

Inquiry opened on 28 October 2014

Accompanied site visit made on 5 November 2014

by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT

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

Decision date: 15 December 2014

Appeal Ref: APP/Y2736/A/14/2217803

Land at Westfields New Road to Kirkdale Lane, Kirbymoorside, North Yorkshire, YO62 6HD.

- 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 Gladman Developments Limited (the Appellants) against the decision of Ryedale District Council (the Council).
 - The application Ref. No: 13/01314/MOUT, dated 12 November 2013, was refused by notice dated 13 February 2014.
 - The development proposed is for up to 225 (use class 3) residential dwellings, the provision of expansion land to Kirbymoorside Community Primary School (use class D1), landscape, open space, highway improvement works and associated works.
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Decision

1. For the reasons given below, this appeal is allowed and outline planning permission is granted for up to 225 (use class 3) residential dwellings, the provision of expansion land to Kirbymoorside Community Primary School (use class D1), landscape, open space, highway improvement works and associated works on land at Westfields New Road to Kirkdale Lane, Kirbymoorside, North Yorkshire, YO62 6HD in accordance with the terms of the application, Ref. No: 13/01314/MOUT, dated 12 November 2013, subject to the conditions set out at Annex A to this decision.

Preliminary matters

2. First, the submitted application was for outline planning permission, with all matters except access reserved for subsequent approval. However, when questions prompted by third parties were put to the Appellants about the design and functionality of the proposed access arrangement, their answers identified several anomalies. The Appellants had been in discussion with the highway authority and made some suggestions to them about the form the junctions should take to accommodate the adjacent access to the school and the operation of a nearby local recycling facility. However, these had been rejected and the Appellants described the current proposal as "unusual".
3. The junction design purports to follow the standards in the Design Manual for Roads and Bridges (DMRB), but it was difficult to reconcile the design

standards and the layout on the submitted plans. Moreover, in a situation where the scheme access would be to the A170 and incorporate two right turn features, a shared cycle and pedestrian route, two bus stops and the access to the school and the recycling facility the potential for vehicle/pedestrian/cycle conflict is clear and this was confirmed when visiting the site. Moreover, the speed limit on the A170 is at the change point from a 40mph to the national 60mph speed limit, where there is no street lighting. Although there is no statutory requirement for a Stage 1 Safety Audit to be undertaken, having regard to the circumstances of this case, it seems an unfortunate omission.

4. On reflection, the Appellants acknowledged that further consideration should be given to the layout in consultation with the highway authority. As such, they requested the application to be considered as a pure outline application with all matters reserved for subsequent approval. This seems a sensible course of action. Crucially, I am satisfied that an acceptable form of junction layout can be achieved on land in the Appellants' control or within the public domain and that no party would be adversely affected by adopting this approach. Accordingly, I have considered the appeal on this basis.
5. Secondly, the application was refused for five reasons listed on the decision notice. However, following further consideration, the Council resolved to delete two of the reasons for refusal and to consolidate the remaining three into two reasons. It is these two reasons that the Council sought to defend at the inquiry.
6. Thirdly, the inquiry was advised that a previous application for a similar size of residential development on the appeal site had been granted outline planning permission by the Council in 2013, subject to conditions. However, this decision is the subject of an as yet unresolved legal challenge by a third party, ostensibly on the basis that a Member of the Council's Planning Committee had pressed the wrong button and this had led to the application being approved as opposed to refused. The inquiry was further informed that the legal proceedings were stayed pending the outcome of this appeal.
7. As a consequence, both the Council and the Appellants recognise that the earlier decision is a material consideration and it is the responsibility of the decision maker to decide the weight that should be afforded this decision, not least in the context of it being treated as the fall-back position. However, both main parties strongly urged me not to afford the earlier decision any weight and to determine this appeal on its individual merits.
8. I asked if there was an affidavit to support the challenge, but I was told no. Even so, the Courts had accepted the challenge and in the absence of an affidavit, the Court was to summon the Councillor for cross examination. Although the Council does not intend to defend the challenge, the Appellants will. It is clear that both parties fear that should I be minded to allow this appeal and in doing so rely on the fall-back position, and subsequently the Courts decide in favour of the challenge, the extant permission would fall and the decision in this case would itself become vulnerable to legal challenge.
9. In support of the main party's submissions, the inquiry's attention was drawn to the judgement in the case of **Abdul Wakil v Hammersmith and Fulham**

LBC [2013] EWHC 2833 (Admin). In this (P78), Lindblom J observed *"...my view, this is a circumstance that the Council's committee was entitled to take into account. When it met to make its decision the possibility that the SPD would be quashed, and thus cease to be a material consideration in a development control decision, could not be discounted. A quashing order was one of the remedies sought in the claim. The claim had yet to be heard by the court. Its outcome was uncertain. Neither the officers nor the members knew it was going to succeed. But they knew it might. They did not have to gauge how likely this was. In the proceedings the Council was defending the process by which it had adopted the SPD. It was obvious, however, that if the SPD were held to have been unlawfully adopted, and if its content had influenced the decision on Orion's application, that decision might itself be vulnerable to challenge. It was for the Officers and in turn their members, to consider whether in these circumstances the SPD should be given any weight in the decision that they had made. Both Officers and Members clearly thought it should not. They decided not to rely on the guidance in the SPD when they determined the planning application. This was not, in my view, a course precluded by the Council's stance in the judicial review proceedings. Far from being irrational, it was I think, entirely realistic in the circumstances."*

10. Although there would appear to be some similarities between the Abdul Wakil case and those pertaining here, there are some fundamental differences. Crucially, the Abdul Wakil Judgement does not endorse the principle that in any circumstances where something that is a material consideration is being challenged, it should be given no weight, because there is a possibility it might not exist in the future.
11. Against this background, it is clear to me that the extant permission cannot be ignored. It is a material consideration. Thus, in my view, the safest approach is first to consider this appeal on its individual merits. Having done that, to consider then what impact the quashing of the extant planning permission would have on the decision. On the one hand, if it would not make any difference to my decision then this should not present any problem or any risk of challenge on this point. On the other hand, if it would make a material difference to my decision then it would be necessary to determine how much weight should be attached to the possibility of the fall-back position changing in the future and how such a change would affect the decision. Accordingly, I have dealt with the appeal on this basis and revisited the extant permission at the end of the planning balance.
12. Fourthly, the application was judged by the Council to fall within Schedule 2 (10(b)) 'urban development projects' under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, as informed by the tests in DETR Circular 02/99. However, as the appeal site is not in a sensitive area as defined by the 2011 Regulations and would not be likely to give rise to any significant effects on the environment within the meaning of the 2011 Regulations and the associated guidance, the Council's screening opinion concluded that the appeal scheme does not constitute EIA development and, thus, an Environmental Statement did not need to be submitted with the application. In the absence of any objective evidence to the contrary, I see no reason to disagree.

13. Next, a signed s.106 Agreement between the main parties and the landowners was submitted to the inquiry. This covers contributions to education, highways and a Travel Plan, affordable housing, open space and subsequent management of the site, following completion of the development. A document had been submitted by the Appellants to confirm that the s.106 is CIL compliant. A set of draft conditions was discussed at the inquiry should the appeal be successful. Final alterations to these had regard to the content of the recently published Planning Practice Guidance (PPG), following cancellation of Circular 11/95.
14. Finally, an application for a partial award of costs was made in writing by the Appellants against the actions of the Council and this is dealt with under separate cover.

Development Plan Policies

15. Having regard to s.38(6) of the Planning and Compulsory Purchase Act 2004, this appeal must be determined in accordance with provisions of the development plan (DP), unless other material considerations indicate otherwise. The relevant DP policies underpinning the Council's decision are those in The Ryedale Plan – Local Plan Strategy 2013 (LPS), some saved policies from the Ryedale Local Plan (2002) (LP) and the accompanying Proposals Map (2002). Although adoption of the LPS is recent, and in general terms its policies should attract full weight, including the LPS allocation of 300 new homes in Kirbymoorside, there is a caveat to it being judged up to date in sense required by the National Planning Policy Framework (the Framework). In the absence of a 5-year supply of readily available housing land, any relevant policies that are designed to restrict the supply of housing should not be considered up-to-date.

Main Issues

16. The main issues to be decided in this appeal are:
 - whether the proposal is required to meet the need for market and affordable housing;
 - the effect the scale and location of the proposals would have on the character, form and setting of the market town of Kirbymoorside; and
 - the sustainability accreditation of the proposals;
17. In addition to these main issues, a number of other considerations generated by third parties were aired at the inquiry.

Reasons

Market and affordable housing

18. The crucial point here is that the Council concedes that it cannot identify a 5-year supply of readily available housing land that would meet the objectively assessed housing requirement. The most up-to-date figures produced were for the period up to the end of June 2014.
19. As noted above, where a local planning authority is unable to demonstrate a 5-year supply of deliverable sites, Paragraph 49 of the Framework indicates

that relevant policies for the supply of housing should not be considered up-to-date. Housing applications should be considered in the context of the presumption in favour of sustainable development, bearing in mind the imperative in Paragraph 47 to boost significantly the supply of housing. Accordingly, the provision of 225 dwellings, of which some 35% would be affordable, would be a substantial benefit that weighs heavily in favour of the appeal proposals.

20. At this stage, it is appropriate to identify a number of objections to the housing land assessment from third parties. In the first place, it was contended that the June figure was already out of date. It was submitted that planning permissions that have been granted for a number of sites since that date mean that a 5-year supply of suitable land now exists. However, as the Council and the Appellants pointed out, many of the applications identified by Objectors are not at a sufficiently advanced stage to count towards the current supply figure.
21. In some cases they had not actually received planning permission and in others there is just a minded to approve resolution in place. On one other site in Kirbymoorside there is an impasse between the developer and the local highway authority, with no clear line of resolution in sight. Delivery on this site within 5-years must, therefore, be questionable. In addition, whereas it is apparent that new permissions are coming forward, it is equally true to say that other sites have moved on since June 2014, with units having been completed. These, of course, need to be deducted from the supply figure.
22. Two other factors militate against the third party objections. The first of these is that in looking at the dwellings proposed on certain sites the full complement has been taken into account. Even if we ignore the 10% discount factor 'adopted' by the Council in its assessment, this should, of course, be tempered by the realistic potential for these to contribute within the 5-year period from June 2014. On several large sites build out is not expected within the next 5-years. The second and key point is that, having looked at the available information, the shortfall is of such a magnitude that there is no certainty that the sites proffered as likely to come forward in the short term would meet or exceed the 5-year requirement.
23. Bearing all these factors in mind, whereas the June figure may not be entirely up-to-date, it is very recent and there is nothing to suggest that anything that has occurred between then and now would mean the 5-year supply figure would be met. Accordingly, the June figure can be accepted as an objective base for the assessment.
24. Next, questions were raised about the affordable housing contribution and whether the proposals would assist in housing the growing elderly population. On the first point, there is agreement between the Council and the Appellants that there has been a shortfall in affordable housing provision over recent years, when compared to the Council's objectively based assessment. Insofar as the contribution the appeal site would make, this would be 35%: circa 80 units. Whereas this would not address the shortfall in full, it would meet the annual requirement of 10 units in Kirbymoorside during the construction period of 7 to 8-years. The inquiry was assured by the Appellants that the proposed development was sufficiently viable to deliver this level of affordable

housing, and this was not challenged. In addition, the affordable units would be divided between the various renting and purchase options in a formula acceptable to the Council and the units would be retained in the affordable sector going forward.

25. As for catering for the elderly, the scheme proposes 25 bungalows as well as some affordable housing likely to be suitable for older people. As this application is in outline, this is something the Council could control when considering any reserved matters application.
26. The Site Allocations Development Plan Document (DPD) is a considerable way off and unlikely to be delivered before the end of 2015. Neither is there a draft or emerging Neighbourhood Plan in being. I conclude that as there currently exists a shortage in the 5-years supply of readily available housing land over a range of sites as required by paragraph 47 of the Framework the proposed development would contribute to meeting the need for market and affordable housing in Kirbymoorside and I afford this substantial weight in favour of the appeal scheme.

The effect the scale and location of the proposals would have on the character, form and setting of the market town of Kirbymoorside

27. As far as this issue is concerned, it seems to embrace a number of factors, including the size of the development in relationship to the town, the scale of it *per se* and the visual implications from surrounding vantage points. There is a fear that 200+ dwellings delivered on a single site within a timescale of 7-8 years would change the character of the town in terms of its local feel and social identity. No figures were given for the anticipated occupancy rate of the new dwellings, but it is easy to see that this could represent a significant percentage increase in the town's population over a comparatively short time. Moreover, some other sites already have planning consents and others may come forward.
28. However, the Council, through the LPS, identifies Kirbymoorside as a one of three Local Service Centres (Market Towns) capable of supporting growth. The appeal proposals are not inconsistent with this and in reaching this position, account of the size and character of the town and its tag as a 'rural gem' would have been taken into account by the Council and the Inspector in promoting and confirming the 300 dwelling requirement for Kirbymoorside evinced by LPS Policy SP2 (Delivery and Distribution of New Housing).
29. LPS Policy SP2 and supporting guidance looks for development in the town to comprise small to medium sites i.e. up to 100 units and to lie within the current development limits, adjacent to built-up areas in locations predominantly north of the A170 and to the east and west of the town. The appeal site would meet several of these criteria being north of the A170, adjacent to existing built development and to the west of the town. While it would not be within the existing current development limits it is a matter of agreement that there is no possibility that sufficient land could be found within the limits and the boundary will have to be extended.
30. In this regard, although developing the appeal site could be seen as weakening the historic north-south axis of the town, it would not extend development west of the northwest corner of the second field, which would be

acceptable to the Council. In any event, the desire to site new development to the east and west of the existing built up areas creates a tension with the aim to retain the north-south axis.

31. As for the requirement for small to medium sites, clearly such a large development rapidly built out could pose problems for service provision and social assimilation in the town. However, even with a larger site such as this, phasing, which could be secured by condition, would produce much the same outcome as required by the policy. In this case, the build out rate is only anticipated to be 30 units each year and so less than 100 units in any three years. This would meet the aim of controlling the rate of growth of the town as sought by LPS policy SP2.
32. Incidentally, there is some suggestion that LPS Policy SP2 is a housing control policy that should fall away with the lack of a 5-year land supply. I disagree. I do not understand that the intended function of Policy SP2 is to restrict or prevent housing on this site or elsewhere. I read it as a policy to ensure a range of sites comes forward and to control the rate of growth of the town in the interests of social cohesion and service provision.
33. One further critical point is that the Council's SHLAA undertaken to inform the LPS and the forthcoming DPD went beyond a simple call for sites. In respect of Kirbymoorside a further coarse sieve was undertaken to remove sites that affected designated land, such as visually important undeveloped sites. This sift was extremely telling about how the town could meet its LPS obligations of 300 houses, especially when added to the criteria that sites should be located north of the A170 and to the east and west of the existing town boundary. A further Policy SP2 constraint is that sites need to avoid the coalescence of Kirbymoorside and Keldhome, and this materially reduces the options to the east of the town.
34. In a nutshell, the sites that meet these criteria would deliver relatively few dwellings. So much so that, without the appeal site, the target of 300 dwellings in Kirbymoorside could not be met without encroachment onto more sensitively designated land. It is hardly surprising, therefore, that the local designations such as Areas of High Landscape Area (AHLV), which surround virtually the entire town to the north of the A170, including the appeal site, have attracted development interest. However, the AHLV, while a local designation of sensitive land, attracts no national status. As such, its sensitivity and the weight this would attract should be on a site by site basis.
35. The Fringe of the Moors AHLV local designation of the appeal site was confirmed in the LPS and Policy SP13 requires development proposals to contribute to the protection and enhancement of distinctive elements of the landscape character, including the distribution and form of settlements and buildings in their landscape setting and the character of individual settlements. The appeal site lies on the edge of National Character Assessment 25 (NCA25): North Yorkshire Moors and Cleveland Hills and just to the north of NCA26: Vale of Pickering. Its Local Character Assessment is of undulating farmland, comprising three fields down to grazing and one in arable use. Field boundaries consist of a mixture of hedgerows and trees. It has no particularly special features, but, with the loss of openness, its character would change fundamentally if developed.

36. Unlike the Council, third parties raise objections specific to the harm to existing landscape features and views into and out from the appeal site from and to external vantage points. The rural and open appearance makes a positive contribution in a number of ways. Large areas of the appeal site can be seen from public vantage points to the south and west and these visually define the extent of the Town to the west. As such, they submit that the loss of the open aspects constitutes a strong objection.
37. On the site inspection, the appeal site's landscape value was assessed from available public viewpoints. From the north, little if anything could be seen of the appeal site. From the east, in the vicinity of Vivers Hill, the appeal site could be seen, but comprised only a narrow sliver of land beyond a very much more substantial block of the existing townscape.
38. From the west, the approaches to the Town along the A170 and the public footpath from the direction of Snapes Wood were assessed. In both cases, they currently benefit from the lack of enclosure and the rural ambience this delivers. The public access to these views heightens the landscape value and the new development would advance the built form and this is accepted as a negative factor.
39. However, from these two locations the loss of openness would be tempered by the material benefit the proposed landscape would offer to these views, when walking or driving towards the town. At present, the houses on the boundary of the town do present a hard or harsh edge. This is not to say that it comprises an unrelieved wall of built development, but many of the buildings can be seen and, unsurprisingly, there has been a tendency to keep the planting low to preserve the view out over the open land. The structural landscape features proposed for both the existing town boundary and the westerly appeal site boundary would soften views and very quickly totally screen the former.
40. The only caveat is the way the high land to the northern edges of fields 1 and 2 would be treated. The existing buildings just to the east of the appeal site boundary are unquestionably the most visually prominent development on this edge of the town. It follows that the same would apply to any new houses built on the higher land of the appeal site. Having said this, the highest areas are shown as landscape on the indicative plan and, of course, the proposal is in outline, with the precise layout of the development and the landscape still to be determined. In the event this development proceeds, it would be in the Council's gift to look again at the illustrative layout to see how any visual concerns could best be addressed.
41. One further argument advanced by the Council was that in the vicinity of the boundary between the second and third field the topographical landform displays a fold or ridge and that the worst part of the proposal was the visual implications of extending the built development over and to the west of this feature on fields 3 and 4. On site, some undulations in the general flow of the land from northwest to southeast are discernible, but there is nothing so obvious as to form an insurmountable problem. In my view, the differences in level would be less than a storey in height and this could be addressed by the judicious placement of the higher structures on the site.

42. Turning to views from the south, around Edstone Hill, there is no doubt that the built extension of the town to the west would be visually intrusive. It would be significant in scale when viewed alongside the visible part of the existing town. Moreover, the mitigation potential would be much less. As one is looking from an elevated position, the growth of landscape planting on the southern boundary of the appeal site would take longer to deliver beneficial effect. As such, this counts as a negative factor to be weighed in the balance.
43. Incidentally, several Objectors advanced support for using brownfield sites, especially those to the south of the A170. While understanding the broad concept of brownfield over greenfield, it is not quite as straightforward as they suggest. In the first place, being south of the A170 is not a preferred location for residential development in the LPS. In addition, one of the sites (Tesco) has an extant retail permission. This could attract a higher land value than even residential use, though this could change as the larger retail chains review their position in the market. The other is an existing commercial enterprise (Micrometalsmiths). Although there are suggestions this will close, there is nothing concrete to say that the Council would accept a change of use from employment to residential. As was pointed out repeatedly by Objectors, there is a lack of jobs in Kirbymoorside and to develop this site for housing could only exacerbate the problem.
44. One can appreciate the Council's and third party concerns. Notwithstanding given the recently adopted LPS many of these arguments are significantly tempered by other factors. The loss of a tranche of the AHLV would be undesirable, but the appeal site is not flagged up as being especially sensitive and some, and probably all of it, will be needed to provide land for the levels of growth adopted in the LPS.
45. In summary on this issue, there would be the downside of the loss of openness and the visual extension of the town's built environment when viewed from public vantage points to the west and particularly south. However, this negative weight is significantly tempered by the improvement to the hard edge when looking from the west, with the proposed structural landscape. Here a particular benefit would be the softening of the town's existing hard edge. The significant objection that remains is the view from the south, where the Town would appear greatly extended to the west for a long time. This rests uncomfortably alongside LPS Policy SP2 and carries appreciable negative weight through to the final balance.

Sustainability accreditation

46. The Framework requires the sustainability of a proposal to be considered against all the relevant policies. These should be themed by looking at three stands of sustainable development, social, economic and environmental.
47. In the context of social matters, with three exceptions the appeal proposals do not add anything to the town's infrastructure. It would rely exclusively on the existing shops, services and entertainment offers. The exceptions would be first, the benefits for education by providing the land for an extension to the infants and primary school alongside the site. The second and third would be the contribution of some 80 affordable homes to meet the local need identified by the Council and the inclusion of bungalows that should be

attractive to the elderly. In addition, the new residents would support some or all of the social functions and activities in the Town.

48. Turning to the economic benefits, in the beginning there would be construction jobs, perhaps employing some local people and using local shops and services and possibly building suppliers. Thereafter would be the additional jobs invariably created by new dwellings; tradesmen and cleaning staff and childcare assistants. Finally, the increase in the Town's population would support existing business.
49. Moving next to the environmental impacts of the project, these would undoubtedly create some negatives in the balancing equation. Looking at accessibility, the situation at present is that residents on the appeal site would find it difficult, if not impossible, to travel by public transport to jobs in the larger centres of Malton and Norton, York and Scarborough. The bus timetables just do not allow this. To address this shortfall, money would be invested in improving the level of service through the mechanism of the s.106. It is contended that this would support additional buses for some 5-years and this offer would also benefit existing residents.
50. While this would be helpful, the Agreement means that the bus subsidy could end well before the site was built out, with about a third of the dwellings still to be constructed. This would leave the bus operator in the position of being unlikely to know if the continuation of the service improvements would be viable. Moreover, the newer residents would be unable to benefit fully from the Travel Pack proposed for the site. These factors temper the positive weight of this transport offer in the overall balance.
51. In this context, it is submitted by third parties that there would be no local jobs for the people moving into the new houses and that they would be forced into lengthy commutes, in most cases by car. It is true that at present employment within the town is more likely to decrease rather than increase, with information that at least two of the larger employers are looking to move elsewhere. However, as pointed out above, there would be some new jobs associated with the development and there are two potential retail sites to come forward. In addition, some of the properties would be targeted at the more mature members of the population that are less likely to be seeking employment.
52. The circumstance that militates against according these factors greater weight is a simple one. Kirbymoorside is one of the towns designated for growth in the approved LPS, with an allocation of at least 300 dwellings. It does not matter where these 300 dwellings are located in or around the town, the occupying residents would face similar transport and employment difficulties.
53. As for walking and cycling, there seems to have been an expectation that combined walk and cycle access routes would be provided both along the public footpath in the northern reaches of the appeal site and to the south via the proposed emergency access and thence along Westfields. The latter would be available, but the conflicts between cars, cycles and pedestrians at school opening and closing time could make this difficult to manage.
54. However, the former would require a change in status of the footpath to a route that can legally permit cycling. Cyclists could dismount and walk with

their cycle, but I do not see this as being likely, especially as the available footpath width is narrow in places and cycle calming measures would no doubt be introduced to prevent conflict. These controls could inhibit use by the less mobile and parents with prams. Thus, I have attached little weight to it as a potential cycle route.

55. It should be possible for the vast majority of residents to walk the distance to town from most parts of the appeal site. However, there are some changes in level and the lack of the lighting would make it less attractive during the darker mornings and evenings. Clearly the footpath within the site could be improved, but the inquiry was not advised of any proposals for the remainder of the link to the town centre. As such, careful management would be necessary to ensure the pedestrian options offer attractive routes between the appeal site and the town centre. Consequently, despite the Travel Plan I see many residents turning to the car even for local trips and this could exacerbate difficulties in the town centre, where parking is already at a premium. Once again, however, I see similar tensions arising from most of the other sites that could realistically contribute to the Kirbymoorside housing requirement.
56. Next, the Design and Access Statement accompanying the application presents an enticing array of sustainable construction innovation to reduce the carbon footprint and sustainably manage waste and water. As this is an outline application, it would fall to the Council to secure these desirable features as part of any subsequent reserved matters application.
57. In summary on the sustainability attributes of the appeal proposal, many features on offer are distinctly positive. However, there are some negative environmental factors, which carry weight against the scheme. These matters are dealt with in the final planning balance, which also concludes on sustainability.

Other matters

58. Moving to the main outstanding matters raised by local residents and Councillors, these pertain principally to access/traffic, the loss of agricultural land, wildlife, residential amenity, heritage assets and drainage.
59. The first of these regarding access and traffic has been touched upon previously, especially with the conversion of the application to one with all matters reserved for subsequent approval. However, there are a couple of additional matters. The first of these is the operation around the school entrance. This was observed at both morning assembly and afternoon close. In the afternoon there were over 70 cars visits during the period 1510-1545 hours, with a maximum of 56 parked on the road and in the lay-by at one time. There were some interesting manoeuvres, but very little abuse of the keep clear markings and Traffic Regulation Orders and no material impact on the movement and safety of traffic on the A170.
60. On the other hand, in the morning there was consistent abuse of the keep clear zone, with many drivers seeming to view this as an invitation to stop, forgetting that it is there to maximise the visibility of and for children crossing the road. There was also more congestion. However, the duration of activity was shorter and again users of the A170 suffered no inconvenience. The

interesting thing was that drivers entered the lay-by from both ends and in the morning peak hour this could create problems if the existing access design for the appeal scheme was pursued. The right turn into the lay-by from the site access road would be problematic, especially with children emerging from waiting vehicles on both sides of the lay-by. A one-way operation through the layby would certainly merit examination.

61. One further worry is the possible use by cyclists and pedestrians of the emergency access immediately to the east of the school. Uncontrolled this could pose a safety hazard. However, I am satisfied that the most obvious dangers could be designed out, with the use of opening or demountable guardrails. Where there could be some problems would be on the stretch of Westfields nearer the town centre, where footways are narrow and the street heavily parked.
62. Secondly, the land is agricultural classification 3a and 3b, meaning that some is the best and most versatile farmland. The fields are in agricultural use for arable, grazing and growing hay/silage at present, but their loss is not objected to on the basis that any agricultural unit would be compromised and this remained unchallenged. Neither was it submitted to the inquiry that 3a land was in short supply locally. Consequently, this represents only a small negative factor.
63. Next, the effect on wildlife was raised by some and there is no doubt that some wildlife would be affected. However, the inquiry was not appraised of any surveys showing that the habitat of protected species would be disturbed and on any greenfield site there will always be some negative impact that must be weighed in the balance. Thus, while undesirable, the loss of habitat only counts as a very minor objection.
64. Looking at the harm to residential amenity, concerns were raised about property values and loss of view. On the first point, property values are not a material planning matter and, thus, can carry no weight. As for loss of view, the weight to be afforded this is a matter of fact and degree. All the dwellings with the potential to overlook the appeal site are single storey, though one or two have dormers, and some occupiers have planted along their rear fence lines. As a consequence of the appeal scheme, many open views would be significantly foreshortened and be replaced by relatively dense planting and this would also reduce the prospect of late afternoon and evening sun during some seasons of the year. However, the residual outlook would not be unsightly, and whereas the occupiers of an appreciable number of properties would be unhappy, the harm would not be of such significance as to constitute a material planning objection.
65. Turning to the next topic, third parties argue that the adverse effects of the proposals on heritage assets around the town constitute a reason for resisting the appeal scheme. This is not an objection advanced by the Council as either a reason for refusal or as part of its evidence.
66. With the substantial buffer between the identified assets and the appeal site the Conservation Area and Listed Buildings in the Town Centre, the character and appearance of neither would be in any visual relationship with or have their setting affected by the appeal proposals. Their setting would remain one

of a town setting deriving little if anything from the surrounding rural area. As such, their setting would be preserved. Accordingly, the obligations under the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Area and to have special regards to the desirability of preserving Listed Buildings and their setting, are satisfied.

67. Finally, although drainage of the site and flooding of the A170 are advanced as concerns, the responsible authorities are content that, with appropriate conditions attached to any permission, the situation would be manageable. In the absence of any objective evidence to the contrary I do not see this as a cogent objection.
68. Thus, apart from the aforementioned effect on agricultural land and wildlife, I find no material harm arising from any of the other matters that would weigh against the scheme.

Overall conclusions and Planning balance

69. In the light of the lack of a 5-year supply of deliverable housing sites, the contribution to general housing in the situation of a shortfall of sites and the provision of affordable housing, the land for the school extension and the softening of the western edge of the town on the footpath and highway approaches delivers substantial weight. The project offers modest social and economic contributions, which add to the weight in favour of the scheme.
70. There would be appreciable harm to the environment including the tensions with LPS Policies SP2 and SP13, some modest worries about accessibility and minor harm from the effects on agricultural land and wildlife. However, I conclude that the elements of harm identified would not significantly outweigh the aforementioned substantial benefits.
71. Thus, taking into account the Framework as a whole, including the benefits of the scheme and the considerations about social, economic and environmental well-being, the scheme would be sustainable development in the terms evinced by the Framework and the appeal should be allowed.
72. At the start of this decision, I said that I would return to the weight to be given to the challenged, but extant planning permission for the appeal site. As I have found that this appeal should succeed on its own individual merits, the previous permission and the fall-back position that might deliver has not been relevant and has attracted no weight.

Conditions

73. The submissions include a set of conditions which were considered at the inquiry in the light of the advice in the Framework (Paragraphs 203 and 206), the PPG published on 5 March 2014 and the Model Conditions that were appended to the Circular 11/95, the main text of which has been cancelled by the PPG. As a result, the original 30+ conditions have been whittled down to 22 agreed conditions, which include several suggested by the Yorkshire Water. I have looked at these and, where necessary, made minor textural changes.

74. The first five conditions are standard time conditions and those necessary to define the extent of the permission. Suggested Condition 6 is a landscape condition needed to ensure that the development settles into its environment and delivers the visual benefits to the western edge of the Town. Suggested Condition 7 covers the provision of public open space essential to meet local policies and in the interests of the health and welfare of future residents. The heritage assets of the site are safeguarded by Suggested Condition 8 and Conditions 9 and 10 are necessary in the interests of protecting the amenity of existing residents and those moving in during the early phases of development. Suggested Condition 8, 9 and 10 are included here as they could affect layout and phasing.
75. As for conditions 11 through 18, these cover surface and foul water and several are suggested by the Yorkshire Water. In the light of this being an outline application, with all matters reserved for future approval, it is arguable whether all are necessary at this stage. Suggested Conditions 11 and 12 are certainly essential to define the details that would be submitted with a reserved matters application and cover the need for sustainable drainage techniques and the principle of separate foul and surface water drainage systems.
76. However, suggested Conditions 13 to 17 attract a lower level of necessity. Having said this, the phasing requirement in suggested Condition 13 would have a direct bearing on layout and 14 to 17, are in the interest of good drainage management, and could well influence the layout/design and phasing. Accordingly, I accept they should be included at this stage. Finally, suggested Condition 18 is repeated subsequently as suggested Condition 22 and I think this is necessary to safeguard water services and to inform the layout of the site. I have chosen the wording in suggested Condition 22 as this conforms better to the guidance.
77. Returning to suggested Condition 19, pertaining to biodiversity, this is necessary in the interest of ecology and would affect the proposed layout details. The Travel Plan embraced by suggested Condition 20 is not necessary at the outline stage and is something that is more appropriately covered later. Finally, suggested Condition 21 covering off-site highway works is necessary to serve the needs of highway safety and the free flow of traffic and will influence the final access layout.

Overall conclusion

78. In the light of my conclusions, and having taken into account all other matters raised, this appeal succeeds.

J S Nixon

Inspector

APPEARANCES

FOR RYEDALE DISTRICT COUNCIL:

Mr David Manley Queens Council, instructed by a Council Legal Officer

He called:

Mr Robin Newlove LLB DipTP MRTPI MUKELA Associate Director URS Infrastructure & Environment UK Ltd

FOR THE APPELLANTS GLADMAN DEVELOPMENTS LTD:

Mr Paul G Tucker Queens Council, instructed by Mr T Dean MA Dip TPS MRTPI

Assisted by:

Mr Alun Evans Of Counsel.

They called:

Mr Gary Holliday BA(Hons) MPhil CMLI Director FPVR Environmental & Design Ltd

Mr Tim Dean MA Dip TPS MRTPI Planning Director of GDL

Mr George Venning MA Associate Director Levell Ltd.

Mr B Jackson BA(Hons) MSc CHIT Managing Director of Andrew Josephs Ltd

THIRD PARTIES:

Cllr Sarah Ward Member of Ryedale District Council and Kirbymoorside Town Council

Mrs Christine Dowie Mayor of Kirbymoorside

Mr Neville Kirby Resident

Cllr John Clarke Member of Ryedale District Council

Mr Brian Hewitt Resident

DOCUMENTS HANDED IN AT THE INQUIRY

- Document 1 Letter of notification and circulation list
- Document 2 Appellants' opening and appearances
- Document 3 Legal submissions on behalf of the Appellants
- Document 4 Judgement in the case of Wakil (t/a Orya Textiles) & Others v Hammersmith and Fulham LBC
- Document 5 Agreed Statement of Common Ground on housing matters
- Document 6 Erratum to previously submitted documentation
- Document 7 Signed s.106 Agreement
- Document 8 Matters pursuant to the s.106 and CIL Regulations
- Document 9 Photographs submitted by Objectors
- Document 10 Agreed bus timetables
- Document 11 Affordable housing details submitted by the Council
- Document 12 Council note on the topography in the landscape and visual assessment
- Document 13 Draft Conditions
- Document 14 Appellants' closing submissions
- Document 15 Appellants' application for costs
- Document 16 Site visit itinerary

ANNEX A

Appeal Ref: APP/Y2736/A/14/2217803

SCHEDULE OF CONDITIONS

Standard Conditions

1. Details of the layout, scale, appearance, access and landscaping ('the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of whichever is the later;
 - (a) three years from the date of this permission, or
 - (b) two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall comprise no more than 225 dwellings.
5. The development shall be carried out substantially in accordance with;
 - a. with the principles of the Design and Access Statement;
 - b. the illustrative Master Plan; and
 - c. in relation to the landscaping of the northern and western site areas, Plan Reference 4751-D-01 (Detailed Landscape Proposals in Northern and Western Site Areas)

Landscaping

6. The reserved matters application for landscaping shall include a detailed Open Space and Landscape Masterplan, a planting schedule of the type, number and size of species of trees and shrubs and details of seeding and/or turfing and a programme for implementation of the planting that shall be submitted to the Local Planning Authority for their approval in writing. The Landscape Masterplan shall demonstrate that the landscaping proposals have taken account of and been informed by the existing landscape characteristics of the site. The landscape planting shall thereafter be laid out and carried out in accordance with the approved Landscape Master Plan and programme.

Open Space

7. The reserved matters layout shall include details of the areas to be laid out as formal Public Open Space (POS) totalling at least 1.5ha and shall include

details of the locations within the scheme where the open space shall be sited and when they will be provided. The formal public open provision shall include the following:

- A Local Equipped Area of Play (LEAP) of at least 0.04ha to the north western indicative open space and should be fenced and include at least five pieces of equipment, two benches and a litter bin. The specific design and layout of this whole area should be submitted to and approved by Local Planning Authority prior to its construction.
- A play area to the southern section of the indicative open space area constituting a Neighbourhood Equipped Area of Play (NEAP) of at least 0.06 and have at least 8 pieces of equipment, two benches and a litter bin. The balance of this area should also have a litter bin and a dog bin. The specific design and layout of this whole area should be submitted to and approved by Local Planning Authority prior to its construction.
- POS which is suitable and available for ball games. The design of this area should be submitted to and approved by Local Planning Authority prior to the commencement of development.

Archaeology

8. No development shall take place within the application site until a written scheme of archaeological investigation including the methodology of further investigation works and a programme for the works to be undertaken has been submitted to and approved in writing by the Local Planning Authority. Thereafter the scheme shall be implemented in accordance with the agreed methodology and programme.

Amenity

9. As part of any reserved matters application a mitigation scheme for protecting the proposed dwellings from traffic noise will be submitted to and approved in writing by the Local Planning Authority. No residential property shall be occupied until the mitigation measures have been implemented in accordance with the approved mitigation scheme.
10. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. All construction work shall be undertaken in accordance with the approved Construction Method Statement, which shall include the following details:
 - (a) The method and duration of any pile driving operations (expected starting date and completion date);
 - (b) The hours of work, which shall not exceed the following:
 - Construction and associated deliveries to the site shall not take place outside 07:00 to 19:00 hours Mondays to Fridays, and 08:00 to 16:00 hours on Saturdays, nor at any time on Sundays or Bank or Public Holiday;

- Pile driving shall not take place outside 09:00 to 16:00 hours Mondays to Fridays and 09:00 to 13:00 hours on Saturdays, nor at any time on Sundays or Bank or Public Holidays;
- (c) The arrangements for prior notification to the occupiers of potentially affected properties;
- (d) The responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
- (e) A scheme to minimise dust emissions arising from construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development. The approved dust suppression measures shall be maintained in a fully functional condition for the duration of the construction phase;
- (f) Erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- (g) Storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives' and visitors' vehicles;
- (h) The provision of wheel washing facilities where considered necessary by the Local Planning Authority in consultation with the Highway Authority; and
- (i) A scheme for recycling/disposal of waste resulting from construction works.

Surface and Foul Water

11. No development shall take place until details of a scheme for the disposal (incorporating where possible Sustainable Drainage principles) of surface water from the whole site have been submitted to and agreed in writing by the Local Planning Authority. The details shall include the proposed volume and rate of discharge, means of flow attenuation, the point/s of outfall, the programme for implementation and how these will be maintained for the life of the development. The scheme shall be implemented in conformity with the agreed details.
12. The site shall be developed with separate systems of drainage for foul and surface water on and off site.
13. No development shall commence until details of the phasing for construction and occupation of the development have been submitted to and approved by the Local Planning Authority. Furthermore, there shall be no more than 100 houses occupied prior to the completion of works required to ensure that there are adequate facilities for foul water arising from the whole development to be treated without risk to the aquatic environment;
14. No part of the development shall take place until details of the proposed means of disposal of foul water drainage and treatment, including details of any balancing works and off-site works, together with a timescale for

implementation have been submitted to and approved by the Local Planning Authority in writing. Furthermore the volume of foul water flows from the development shall be limited to a maximum peak flow of 5 litres per second until such time as the developer has demonstrated that there is adequate provision to treat foul water in excess of 5 litres per second. Thereafter the approved scheme shall be implemented in accordance with the details and timescales agreed;

15. Surface water from vehicle parking and hard standing areas shall be passed through an interceptor of adequate capacity prior to discharge to the public sewer. Roof drainage should not be passed through any interceptor;
16. No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall for surface water have been completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority before development commences;
17. No buildings shall be occupied or brought into use prior to completion of the approved foul drainage works required for each phase of the development;

Biodiversity

18. No development or other operations shall commence, including but not limited to site clearance and site preparation, until a Biodiversity Management Plan that shall include provisions for ecological retention, enhancement and future maintenance and management has been submitted to and approved in writing by the Local Planning Authority. The approved Biodiversity Management Plan shall be implemented in full and subsequently maintained in accordance with the approved Biodiversity Management Plan;

Highways and Transport

19. Prior to commencement of the scheme hereby approved, the details of any required off-site highways improvement works should be submitted to and approved in writing by the Local Planning Authority. The approved works shall be implemented in accordance with the agreed details; and

Services

20. No building or other obstruction shall be located over or within 3 metres either side of the centre line of the water main crossing the site, i.e. a total protected strip width of 6 metres that crosses the site.