



Appeal Decision

Inquiry held on 26 - 28 April 2022

Site visit made on 28 April 2022

by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal Ref: APP/C2741/W/21/3289470

Land off (Car Park Site), Bishopthorpe Road, York YO23 1LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by McCarthy and Stone Retirement Lifestyles Ltd & Henry Boot Developments Ltd against the City of York Council.
 - The application Ref 20/02517/FULM, is dated 18 December 2020.
 - The development proposed is for the erection of extra care accommodation with associated private amenity space, landscaping, substation, vehicular access alterations, car parking and erection of decked car park for third party.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal relates to a development proposal where the Council failed to determine the application. The Council's statement set out its concerns in respect of the scheme which included matters related to the effect of the development on the character and appearance of the area, the use class of the development (with related issues for affordable housing provision and viability matters), and the effect on health care infrastructure in terms of GP surgery capacity.
3. Prior to the opening of the Inquiry, matters had moved on. The Council confirmed that it considered that, subject to suitable controls, the development should be considered to fall within Use Class C2. This being so, it resolved the concerns in respect of affordable housing provision and the related viability matters.
4. Initially it was common ground between the Council and the appellants that the appeal site should be considered to be within the Green Belt. However, subsequently the appellants set out reasons why they consider that the site is not within it.
5. Having regard to the above, I consider that the main issues for this appeal are:
 - whether the site should be considered to be within the Green Belt and, if so, the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the area;

- the effect of the development on health care infrastructure with particular regard to GP surgery capacity; and
- in the alternative, having regard to the conclusion on the first main issue:
 - if the site is within the Green Belt, would the harm, by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal; or
 - if the site is not within the Green Belt, consideration of any merits of the development against any harm identified in an overall planning balance.

Reasons

Green Belt

6. The York and Humber Regional Spatial Strategy (the RSS) sets out the principles in respect of the Green Belt around York and established the 'general extent' of it. This is specifically addressed in Policies YH9C and Y1C. In 2013 the RSS was largely revoked. However, Policies YH9 and Y1C, along with the key diagram, were retained. These Policies are the only adopted Policies (and so the *development plan*) for the City of York Council.
7. Together Policies YH9C and Y1C set the expectation that the detailed inner boundaries of the Green Belt should be established in a development plan document adopted by the Council, taking account of the levels of growth required during, and beyond, the Plan period.
8. A court judgement was submitted by the appellants (the Wedgewood Judgement)¹. This considered how a decision maker should deal with a site which is located within the general extent of the Green Belt for RSS purposes. It provides the principles to apply in reaching a conclusion as to whether the land should be considered to be within the Green Belt itself, on an individual site by site basis. In simple terms, a planning judgement must be exercised based on the RSS, any draft/emerging local plan policy and by site specific considerations.
9. The RSS only indicates a general extent of the Green Belt with the key diagram giving a broad indication of this. No evidence was presented to indicate that the merits of the appeal site itself were considered when the RSS was prepared and subsequently published.
10. The City of York Local Plan Publication Draft (dLP) is currently in examination. The Council confirmed that the Green Belt review and other associated evidence base documents indicate that this site did not meet the purposes of the Green Belt and that it does not need to be kept permanently open. The inner Green Belt boundary in the dLP excludes this site and it is currently indicated as an allocation for housing with a notional quantum of 33 units.
11. The site sits at the southern edge of the built-up area of the City, immediately adjacent to and opposite other built development. It is previously developed land, currently used as a hard surfaced carpark. Planning permission has been

¹ Christopher Wedgewood v City of York Council [2020] EWHC 780 (Admin)

granted for a double decked carpark in the southern part of the site (similar to that included within this appeal scheme). All boundaries of the site are well defined by physical features including a mix of fencing, trees and shrubs.

12. I have had regard to the saved RSS Policy, the dLP (along with the emerging allocation for this site and its associated evidence base) and the physical characteristics of the site including its boundaries. Taking all these factors together, I conclude that this site should not be considered to be within the Green Belt. Although this was not the case in the written evidence submitted by the Council, at the Inquiry its expert witness conceded that, based on all the relevant factors, it would be irrational to treat the site as being within the Green Belt.
13. Given my conclusion on this first main issue, the overall consideration of this appeal falls to be determined against the second sub-bullet point of my final main issue (ie very special circumstances Green Belt considerations are not relevant).

Character and Appearance

14. The appeal site comprises a large car parking area located opposite the former Terry's chocolate factory, which is now predominately housing through a mix of conversion of the historic buildings and new build. The car park is now partly used by some of the occupiers of the former factory site. The parking area is set back and is on a lower level than the road, separated from it by a palisade fence and shrub planting.
15. Although open land bounds the site to the south, the area is largely urban comprising a mix of ex-commercial and residential buildings of varying design and scale. However, I observed and appreciated that a key and notable feature of the surrounding buildings is that, with few exceptions, they front the road creating a robust visual frontage which contributes strongly to the character and appearance of the locality.
16. I note the appellants' thoughts on the design of the proposed building and architecturally, I have no obvious concerns that it would not successfully assimilate with the surrounding vernacular in terms of its scale. I can also understand why the appellants have located the proposed building where it is on the site as it would largely occupy the extant car park hardstanding.
17. The principal massing of the building, in terms of its height and scale, would be focused to the north of the site, adjacent to the rear gardens of the neighbouring dwellings. There would be a narrow walkway providing access to the building from Bishopthorpe Road. Due to the topography of the site, this would be raised above the ground floor level of the building. This would provide an undistinguished, recessed access to the building via a number of single entrance doors. The parties confirmed that the main entrance to the building would be located in the courtyard of the building accessed from the site's carpark.
18. Overall, the proposed building would have very little active street frontage with no functional relationship with the road. The proposed building would appear enclosed on itself and detached from the street. This would emphasise the

contrast between the proposed development and the surrounding built form creating a significant departure from the area's character.

19. For these reasons, I find that the proposed building would appear as an alien feature which would not respond well to, and would appear wholly out of character with, the area, causing significant harm in the process.
20. When heading north, the development would be visible from a public footpath (the Ebor Way) adjacent to the River Ouse. The appellants' Landscape and Visual Appraisal (LVA) contained a number of viewpoints and there was dispute as to whether an additional location should have been included along this route. I viewed the site from this part of the Ebor Way at the formal site inspection and during an informal visit prior to the Inquiry. My observations were not limited to the identified viewpoints and included land between them and significantly beyond them.
21. Development is experienced dynamically as one moves through the landscape. The evidence before me was sufficient to understand the scheme and its impacts and I do not consider that an additional viewpoint in the LVA was essential. The development would be relatively large and in the form of a single building. However, from these vantage points the proposal would be seen against the backdrop of the much larger buildings on the Terry's site and the nearby racecourse. In this context, the development would assimilate appropriately within its landscape and townscape setting. Although I have not found harm from these particular vantage points, this would not mitigate the harm I have identified above.
22. The National Planning Policy Framework (the Framework) requires that development should result in the creation of high quality and beautiful buildings and places, with good design being a key aspect of sustainable development. In addition, it requires that development should be visually attractive as a result of good architecture and layout and advises that where development is not well designed it should be refused. For the above reasons, the development would be contrary to these policy aims in the Framework. I have had regard to Policies DP3, SS1, H2, D1, D2, D4, D5, G1, G3 and G4 of the dLP. Together these emerging Policies seek to ensure that high quality design is delivered and there would be conflict with them. Given that the dLP is still being examined, I cannot give full weight to these Policies and, in any event, given my conclusions in respect of the Framework, they are not decisive in this case.

Health Care Infrastructure

23. Policy HW5 of the dLP sets out that improved, enlarged or additional primary healthcare facilities will be required to support residential facilities that place additional demands on services beyond their capacity. The consultation response from the Vale of York NHS Clinical Commissioning Group (CCG) raised objections to the proposal based on the increased pressure it considered would arise to General Practice (GP) provision in the locality which could not be absorbed by existing capacity. Ultimately the Council raised an equivalent concern in its statement of case and relevant proof of evidence.
24. A resolution proposed by the Council was that a commuted sum (of £72,816) be secured through a planning obligation. This figure was calculated in relation to the likely levels of occupation from the 70 flats, the associated impact on GP

services and then extrapolated to a related cost for increased *new build delivery* (emphasis added) for providing the relevant additional GP surgery floorspace.

25. The appellants maintained that this planning obligation would not align with Regulation 122 of the Community Infrastructure Levy Regulations (2010). Nevertheless, this specific obligation formed part of the final legal agreement provided by the appellants, but it is subject to a clause which would result in it ceasing to have effect in the circumstance that the appeal decision concluded that the obligation was incompatible with the tests in Regulation 122.
26. Regulation 122 requires that a planning obligation may only be sought, and form a reason for granting planning permission, where it is:
 - necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
27. Despite several requests from the Council (and laterally by myself via the Council's administrative officer) representatives from the CCG did not attend the Inquiry. The consultation, and supplementary, responses from the CCG, set out some evidence in respect of the need that may arise from the appeal development. However, it was far from clear as to what extent the appeal development would result in new residents moving into the relevant local area compared to those relocating (eg through downsizing and/or preparing for their social and health needs as they age) within it.
28. The evidence submitted was that there are a small number of local surgeries that could be extended, and this seemed to be the realistic options for providing increased capacity (rather than a new build option). However, there was no evidence that costs for providing new build GP surgery capacity was broadly equivalent to extending an existing surgery. This being the case it is not possible to conclude that the commuted sum proposed would be appropriate to the scale of the appeal scheme.
29. Without this clarity, I can only conclude that the current evidence does not demonstrate that the commuted sum proposed by the Council, and inserted in the appellants' planning obligation, is necessary to make the development acceptable in planning terms or reasonably related in scale and kind to the development. This obligation would not meet these two tests within Regulation 122.
30. In addition, at the Inquiry, I queried the likelihood that increased capacity for GP provision could be made, on the ground, to align with the occupation of the appeal development. Bearing in mind that the CCG declined to attend the Inquiry, no evidence could be provided to demonstrate that any of the identified surgeries could be extended, or another option (such as a new build) could be provided within a reasonable timescale related to the construction and occupation of the scheme. In these circumstances I cannot find that the planning obligation would be directly related to the development. It would not meet this test in Regulation 122.
31. Overall, I conclude that there is not sufficient evidence to demonstrate that the development would have any unacceptable impact on local health care

infrastructure with particular regard to GP surgery capacity. There would not be conflict with Policy HW5 of the dLP or the Framework in respect of the provision of local healthcare facilities/infrastructure.

Other Matters

32. The appeal site is located close to the Racecourse and Terry's Factory Conservation Area and a number of listed buildings forming part of the Terry's site including the former head office building. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard must be paid to the desirability of preserving the setting of a listed building. Similarly, the Framework requires that any harm to the significance of a designated heritage asset from development within its setting requires clear and convincing justification.
33. The Council confirmed that it considered the development would not cause harm to the setting of these heritage assets. I was provided with no tangible evidence as to the significance of these heritage assets or how the proposal could result in any harm to their setting. Therefore, I have no grounds to disagree with the Council on this matter.

Planning Balance

34. The Council accept that it cannot currently demonstrate a five-year supply of deliverable housing sites. No evidence was provided to demonstrate a precise figure in terms of the supply, but the Council estimated that this could be around 3-4 years. Even at the high end, this is not an insignificant shortfall. The appeal scheme would result in the delivery of 70 new dwellings. This would be for the provision of extra care homes, for which the main parties agreed there is a deficiency of units in the western sector of the City. The proposal would help to meet some of this need, and this would result in various social benefits associated with specialist housing for older people. I give this factor significant weight.
35. There was evidence that the development would aid with freeing up some currently under occupied housing stock which could be released to the open market and help to meet the need for other types of housing, such as family homes. However, this factor is integral to the evidence gathered in the consideration of the overall housing needs for the City which would account for all types and tenures of dwellings. Therefore, any shuffle in the occupation of specific types of housing through house moves should not attract additional weight in itself.
36. The development would make use of previously-developed land which would align with the policy aims within the Framework, where the use of such land is encouraged. I also give this factor significant weight.
37. Economic benefits would accrue during the construction period, but this would be short lived. Long term benefits would arise through the occupation of the development, including the employment of staff. However, the scheme seeks to address an existing housing need for older people in the City which should be met. As such, any additional economic benefits that would arise carry very modest weight.
38. The appeal site is located on the edge of the City, on a regular bus route providing access to the centre, and it is in very close proximity to bus stops.

The site preforms well in terms of accessibility and would allow for limiting the need to travel and a choice of transport modes; the Council had no concerns in this respect. A proposal for 70 flats is significant and so, in transport accessibility terms, the development would accord with the policy aims of the Framework. This, however, demonstrates a lack of harm, rather than a substantive benefit of the scheme and so I do not give this factor any significant weight.

39. Subject to appropriate controls, there was no evidence that the scheme would have an adverse impact on environmental considerations. This is a neutral factor. Potential environmental benefits, such as through net gains in biodiversity, were not well evidenced and, as such, I cannot ascribe positive weight to this factor. Other matters where the main parties agreed that harm would not arise, such as to the living conditions of neighbouring residents and highway matters would also be neutral in the overall planning balance.
40. Aside from the saved Policies in the RSS, there is no adopted development plan for the City. This means that paragraph 11(d) of the Framework applies. The development would not offend any of the policies in the Framework that protect areas or assets of particular importance that, themselves, would provide a clear reason for refusing permission. Therefore, in applying paragraph 11(d), planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal when assessed against the Framework taken as a whole.
41. The benefits of meeting a need for specialist housing for older people and the use of previously developed land both individually carry significant weight. Some very modest economic benefits would also arise. However, the creation of high quality, beautiful buildings and places is fundamental to the planning system and good design is a key aspect of sustainable development. The harm that would arise to the character and appearance of the area would be very significant. Considering the proposal in the round, the harm that would arise would significantly and demonstrably outweigh the totality of the benefits.
42. Overall, I conclude that the proposal would not accord with the Framework when taken as a whole. There would also be conflict with the Policies in the dLP, however, in the context of my other conclusions, in itself, this factor is not decisive.

Conclusion

43. For the reasons given above I conclude that the appeal should be dismissed.

K Taylor

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

David Manley KC	Instructed by Carla Fulgoni of The Planning Bureau
He called	
Andrew Mangham Diploma in Urban & Regional Planning MRTPI	The Planning Bureau
Neil Appleton BSc CEng MICE	Transport Planning (York Limited)
Jeremy Smith Dip LA, CMLI	SLR Consulting Limited
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FOR THE LOCAL PLANNING AUTHORITY:

Philip Robson of Counsel	Instructed by the City of York Council
He called	
Erik Matthews BSc(Hons) PGDIP TP	City of York Council
Guy Hanson BA(Hons) B (ARCH) ARB	City of York Council
Sandra Branigan Solicitor	City of York Council

INTERESTED PARTIES:

Cllr Kilbane (City of York Council)
Peter Huxford (Trans Pennine Trail & York Cycle Campaign)
Mr Hayes
Ms Urmston
Mr Leigh
Ms Crook
Mr Lovett

DOCUMENTS SUBMITTED AT THE INQUIRY:

AD 01	Updated site visit itinerary map
AD 02	Transcript of the opening submission on behalf of the Council
AD 03	Transcript of the opening submission on behalf of the appellants
AD 04	Updated draft unilateral undertaking
AD 05	Operational Management Plan
AD 06	Pre-purchase assessment record template
AD 07	Updated draft conditions (26 April 2022)
AD 08	Updated draft unilateral undertaking
AD 09	Transcript of verbal submissions by Ms Crook
AD 10	Transcript of verbal submissions by Mr Hayes
AD 11	Transcript of the closing submission on behalf of the Council
AD 12	Transcript of the closing submission on behalf of the appellants