



Appeal Decision

Inquiry Held on 23 and 24 July 2024

Site visit made on 24 July 2024

by Peter Mark Sturgess BSc(Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2024

Appeal Ref: APP/U2750/W/24/3341645

Land at Knox Lane, Harrogate, North Yorkshire HG1 3AR (Easting 429757 Northing 457621)

- 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 Jomast against the decision of North Yorkshire Council.
 - The application Ref 20/01333/FULMAJ, dated 17 April 2020, was refused by notice dated 9 October 2023.
 - The development proposed is full planning application for 73no residential dwellings with associated parking , public open space and landscaping and the change of use of approximately 460 square metres of agricultural land to domestic curtilage for Nos 51, 53 and 55 Old Trough Way, Harrogate.
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Decision

1. The appeal is allowed, and planning permission granted for full planning application for 53no residential dwellings with associated parking, public open space and landscaping (amended submission) in accordance with the details submitted with planning application Ref 20/01333/FULMAJ on land at Knox Lane, Harrogate, North Yorkshire, HG1 3AR (Easting 429757 Northing 457621), subject to conditions set out at appendix C.

Application for costs

2. Prior to the opening of the Inquiry, an application for costs was made by Jomast against North Yorkshire Council. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

Description of development

3. The proposal was originally described as full planning application for 73no residential dwellings with associated parking , public open space and landscaping and the change of use of approximately 460 square metres of agricultural land to domestic curtilage for Nos 51, 53 and 55 Old Trough Way, Harrogate. However, in the early part of the application process following responses from interested parties, consultees and negotiations with the Council the description of development was changed to full planning application for 53no residential dwellings with associated parking, public open space and landscaping. This was done in order to take account of the responses received

and to bring the proposal in line with allocation H2 of the Harrogate District Local Plan 2014-2035 (HDLP).

4. It is clear to me that all parties to the appeal have had the opportunity to comment on the revised proposal and indeed the interested parties took an active part in the Inquiry and addressed the revised description of development. I have therefore based my decision on the revised proposal and the decision reflects the amended description of the development.

Plans received during the appeal process

5. A number of plans revising the proposal were received as part of the appeal process. These included a Travel Plan, revised landscaping scheme and clarification of the site levels. I find that the areas where the revised plans have been received are not fundamental to the scheme as they relate to areas which could be covered by conditions following any grant of planning permission.
6. In terms of whether any of the interested parties were prejudiced by not being able to comment on these revisions. The proposed revisions were submitted at the very earliest stage in the appeal process, that is with the appeal documents themselves. It was also clear to me at the Inquiry that the interested parties were aware of the proposed amendments and were able to express their views on them and I have taken these views into account in this decision.
7. Therefore, and in terms of the Wheatcroft¹ judgement and the more recent Holborn Studios² judgement the proposed amendments are acceptable as they do not fundamentally change the proposal, nor were interested parties prejudiced as they had time to make comments on the proposed amendments both before and during the Inquiry.

Procedure at the Inquiry

8. The Council gave notice in advance of the Inquiry that it did not intend to defend its position with regard to the reasons for refusal. However, there were numerous interested parties who objected to the appeal proposal who presented their cases at the Inquiry. I have taken these into account in this decision.

Proposed amendments to the National Planning Policy Framework and the Written Ministerial Statement issued on 30 July 2024

9. Since the Inquiry closed, a revised version of the National Planning Policy Framework (the Framework) has been published in draft form for consultation purposes, as well as a Written Ministerial Statement (WMS). Having examined the contents of the revised draft of the Framework and the WMS in relation to the matters at issue in this appeal I consider that the main areas of the Framework relevant to this decision have not materially changed. I therefore decided that it was not necessary to consult the parties on either the proposed changes to the Framework nor the contents of the WMS.

Main Issues

10. The main issues were agreed as:

¹ Bernard Wheatcroft Ltd v. Secretary of State for the Environment and Another, JPL 1982, P37

² Holborn Studios Ltd v. The Council of the London Borough of Hackney [2017], EWHC 2823 (Admin)

1. whether the site is in a suitable location for housing and whether the proposal would result in a severe impact on the highway network having regard to the development plan and the Framework;
2. the impact of the proposal on the character and appearance of the area with particular regard to the Warren Top Special Landscape Area (SLA); and
3. the impact of the proposal on biodiversity and local wildlife.

Reasons

Suitable location for housing

Relationship to Harrogate

11. The site lies on the northern boundary of Harrogate and is adjacent to the urban area. It has pedestrian and vehicular links into the town and ultimately, the town centre. In planning terms and in accordance with Policy GS3 of the HDLP and its proposals map it is located within the "*Development Limit*" of the town. Therefore, it is reasonable to conclude that the site is part of Harrogate town and has access to its facilities, amenities and employment opportunities.
12. The HDLP at Policy H2 allocates land at this location for 52 dwellings provided that any proposal meets the site requirements it sets out. I will deal with the compliance or otherwise of the appeal proposal with Policy H2 later. However, given the sites relationship to Harrogate, its position within the "*Development Limit*" of the town, its allocation in the HDLP and the connections it has with Harrogate I consider that the site relates well to the town. Consequently, the site is in a suitable location in planning policy terms for the proposal for the reasons set out above.

Access to public transport

13. The northern part of Harrogate, where the appeal site is located, is served by a local bus service which takes passengers into the town centre. This is a frequent service, with at least two buses each hour, with the nearest bus stop to the site being around 450m from the centre of the appeal site.
14. The guidance produced by the appellant and the objectors specifies that the distance to a bus stop should be no more than around 400m from the site. I consider the difference between the distance specified in the guidance and the actual distance would not be a significant impediment to people using a bus service. Moreover, the frequency of the bus service would encourage the people occupying the proposed development to use the service.
15. I note that the bus service itself only connects with Harrogate town centre. However, it is clear that Harrogate town centre acts as a transport hub, with both a bus station and railway station. These facilities give access not only to neighbouring towns but to the national transport system. Whilst some objectors have raised the matter of people having to change in Harrogate town centre and to pay 2 fares this is not unusual when leaving a village or a suburban area to make a longer journey by public transport.
16. In terms of longer journeys the site is within walking distance of a bus stop on the A61 which gives access to Leeds and Rippon, every 30 minutes during the day. Whilst the A61 is a busy road at this point and there is a bus stop on only 1 side of the road it would still be practical to walk to this bus stop from the

appeal site. Therefore, occupants of the site would have access to the wider area via this route.

17. The Framework, amongst other things, states at paragraph 114 a) development proposals should ensure that appropriate opportunities to promote sustainable transport modes can be taken given the type of development and its location. It appears to me that the appeal site is within a reasonable walking distance of bus stops and therefore is in a position to allow occupants of the proposed development to take advantage of this opportunity.
18. Policy TI1 of the HDLP seeks, amongst other things to promote sustainable transport. Policy H2 in its development requirements for the appeal site also seeks to ensure that development proposals make use of transport facilities other than the private car. The appeal scheme by proposing to improve footpath links in Knox Lane would assist in connecting the site with the nearby bus stop with links into Harrogate town centre, and thereby help secure the objectives of these policies.
19. Overall, I consider that the site is not located so far away from the existing bus stops so that the occupiers of the proposed development would be put off from using the bus services in the area. Moreover, improvements to the footpath on Knox Lane, outside the site, would encourage the occupiers of the dwellings to access the bus stop, as would the frequency of the existing service into Harrogate town centre. Consequently, I consider that the appeal proposal complies with these policies of the HDLP

Access to facilities

20. The appeal site is located on the edge of the built-up area of Harrogate. Between the site and the town centre there are numerous facilities that would be available to the occupiers of the proposed dwellings. I note there is some dispute about the distance from the site to these facilities and how accessible they would be to pedestrians and cyclists given the gradients.
21. The guidance that does exist on access to facilities by walking and cycling shows that some of the facilities such as schools, the bus stop and the local convenience shop are either within or just outside the maximum recommended distances. Other facilities such as the supermarket, dentist or doctors' surgery would be just as likely to be accessed by private car as they would be on foot or by cycling even if they were nearer to the appeal proposal. I therefore do not consider that the appeal proposal is located so far away from some local facilities to preclude them being accessed by cycling or walking. Where other facilities are too far away to be accessed by walking or cycling it is likely that they would be accessed by private car in any case, such as the supermarket.
22. The development requirements of Policy H2 seek the following improvements to access in the area: provide a vehicle, cycle and pedestrian access from Knox Lane; provide pedestrian and cycle links from the site to create a convenient and attractive route through the development to local services and facilities. The footpaths proposed to be created through the site, the access to the site itself and the improvements proposed to Knox Lane all support the development requirements of Policy H2.

23. I therefore find that the proposal would have reasonable access to local facilities and for the reasons given above would comply with the requirements of the HDLP in this regard

Impact of the proposal on the local highway network

24. The appeal proposal would deliver 53 dwellings. The HDLP allocation sets out that the allocation has an indicative yield of 52 dwellings. The Framework at paragraph 115 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact would be severe.
25. The highway impact of the allocation of the site for 52 dwellings was assessed during the local plan process. During that assessment it was found that there would be no unacceptable impact on highway safety, and neither would the residual impact of the additional traffic on the local road network be severe.
26. During the course of the appeal proposal, which is for 53 dwellings, the highway impact of the proposal was reassessed through the submission of a Traffic Assessment. This was considered by the Local Highway Authority and was found to be acceptable. Moreover, it is clear to me that there are several routes out from the appeal site which would take traffic on to the A59, a primary route in the area. I have also had regard to the number of additional traffic movements that could be generated should the appeal proposal go ahead. These, whilst adding to the local traffic would not be significant given the amount of development proposed.
27. I have also had regard to the proximity of the site to another HDLP allocated site (H69). However, there is no current planning application for this site. Therefore, this appeal proposal has to be considered on its own merits (as will the other local plan allocated site, when and if a planning application is made). I consider that the appeal proposal will not have an unacceptable impact on highway safety, and neither would the residual cumulative impact of the proposal be severe, given the scale of other housing developments in the area. Other issues, such as the parking of cars on residential streets in the area, might mean that traffic leaving the site to access the wider road network is delayed slightly, however this is common in residential areas and is not a reason to dismiss the appeal.
28. In terms of congestion and inconvenience to road users during the construction phase this can be dealt with through an appropriately worded condition should the appeal be allowed.

Conclusion on the location of the site

29. The site lies within the "Development Limit" of Harrogate as defined in the HDLP and is allocated for residential development in that Plan. Therefore, in planning policy terms the site is in compliance with planning policy. It also lies in reasonably close proximity to facilities and amenities in this part of Harrogate, including access to public transport. The quantum of the development proposed is in line with that of the allocation. The traffic impact of the proposal has been assessed both through the local plan process and as part of a traffic assessment submitted with the planning application and has been found to be acceptable. I have seen no evidence which counters this position.

30. Consequently, and in terms of main issue 1, the suitability or otherwise, of the location for the proposal is acceptable and in compliance with planning policy for the reasons set out above.

Effect on the character and appearance of the local area, including the Special Landscape Area (SLA)

31. The area within which the appeal site lies is in an area designated in the HDLP as a SLA . To the east lies the urban area of Harrogate whilst to the west lies the hamlet of Knox and open countryside. The site also has a varied topography and whilst it rises from Knox Lane it also slopes towards the gardens at 120 and 122 Knox Lane, reaches a summit at a point around one of the former railway embankments before dropping again towards Oak Beck.
32. In terms of long views these tend to be truncated by the rolling nature of the local topography and the tree cover in the area, with the long views giving only glimpses of parts of the site. This makes the site very well contained within the local landscape. Consequently, the impact of the loss of this open area on the wider character and appearance of the SLA would be insignificant.
33. The boundary of the site with the urban area of Harrogate is heavily wooded and some of the trees are protected by Tree Preservation Orders (TPO). These trees would remain should the development be implemented. The Knox Lane boundary is also wooded, however a significant amount of these trees would be removed, including those affected by ash die back, in order to create the vehicle, cycle and pedestrian access to the site, together with visibility splays. The boundary with the houses at 120 and 122 Knox Lane is relatively open. At the crest of the site where the houses are due to give way to the open space there is no currently defined boundary.
34. Within the site are the remnants of the former railway embankments. However, these are heavily vegetated and barely discernible as railway structures. The former railway embankments and the vegetation which has become established upon them are proposed to be removed as part of the appeal proposal.
35. In terms of Knox Lane itself this currently has dense tree planting along each side. It is single track with a wide verge on the side opposite the appeal site which contains a drain. The dense tree planting over hanging the road give the lane a very rural character. The lane at this point also acts as a transition between the suburban character of the housing to the east and the more rural housing to the west around Knox Hamlet and Spruisty Bridge.
36. The loss of a substantial proportion of the trees along the sites' frontage with Knox Lane would have a significant effect on its character and appearance. Moreover, Knox Lane itself would be widened so that 2 cars could pass, and the existing pedestrian footpath would be widened further eroding its rural character. Furthermore, a significant amount of vegetation comprised of trees, shrubs and scrub would be removed from within the site along with the remains of the railway embankments. This would again result in a significant change in character in the area immediately adjacent to the site on Knox Lane and within the site itself.
37. However, much of this change in character has been anticipated through the sites' allocation as H2 in the HDLP. Therefore, whilst the change in character along Knox Lane in the vicinity of the appeal site is substantial this can be

acceptable if the proposal is in accordance with the development requirements which are set out in H2.

38. The appeal proposal is loose knit and incorporates substantial areas of public open space and planting. This would help to ensure the site reflects its location as being at a transition between the tight urban grain of the Harrogate urban area and the looser knit grain of Knox Hamlet. Moreover, the houses themselves are set away from Knox Lane which allows for replacement planting, where trees and other boundary features have been removed to create the site access and visibility splays.
39. Within the site it is proposed that additional planting takes place particularly along the boundaries, but also in the amenity area to the north. In addition, street trees are proposed together with shrubs and a wild flower meadow. This additional planting would be provided within the built area of the development as well as within the proposed green infrastructure areas and act to soften its impact.
40. The layout would also include pedestrian and cycling links and the ability for a footpath to be created within the site to link with the Harrogate Ringway and the Knox Country Park. It is also clear that by retaining the majority of the mature planting on the boundaries of the site and, where appropriate, reinforcing this, wildlife corridors will be retained which link with other areas of open land in the vicinity. This additionally helps soften the impact of the development on this edge of Harrogate. All of which is envisaged by the development requirements set out at H2.
41. The dwellings themselves are of a standard design, however this does reflect the character of the adjacent housing areas of Old Trough Way and Mill Gate. With regard to the dwellings in Knox Hamlet, whilst the dwellings at 120 and 122 Knox Lane are relatively close to the site, Knox Lane drops quickly from this point meaning there is little visual relationship between the site and the buildings in Knox Hamlet. Certainly, there is no visual relationship between the site and Spruisty Bridge and beyond.

Conclusion on character and appearance

42. Overall, and despite the significant change in the character and appearance it would bring to Knox Lane, the appeal proposal complies with the development requirements set out in Policy H2 of the HDLP. Therefore, the proposal would not unacceptably harm the character and appearance of Knox Lane. The reasons for this are set out above.

Impact of the proposal on biodiversity and local wildlife

43. The site is not a protected site in terms of nature conservation legislation. It is an area of improved grassland with boundary trees and other vegetation including scrub and trees on former railway embankments. There is evidence of protected species at the edges of the site, and these have been accommodated in the design of the appeal proposal. The boundary trees provide routes for bats and potential roost sites. No further evidence has been produced to show the presence of protected species on the site, although it was stated the presence of otters has been detected in gardens adjacent to the site.
44. The appeal proposal includes measures to provide a Biodiversity Net Gain (BNG) on the site. Whilst the existence of a positive impact of biodiversity was

disputed by the objectors no evidence was presented by a suitably qualified person to contradict the Appellant's and the Council's agreed position.

45. A number of other issues were raised by objectors in relation to ecology and nature conservation. These concerned the conflict between people and the natural users of the site, the effect of lighting on the site on any bats that might be present and the need to reduce the amount of natural scrub planting due to the presence of a sewer pipe and the effect that this might have on BNG.
46. I am satisfied that any conflict between the people using the site and the species that might be present has been resolved through the layout of the development and the proposed new planting. The layout and the new planting still allow for corridors of natural vegetation in and around the proposed development. In terms of lighting, as was discussed at the inquiry, this is capable of being dealt with through the use of appropriate conditions should the appeal be allowed, and I agree with this approach. Whilst I accept that the amount of natural scrub to be planted on the site will be reduced due to the need to protect the line of the sewer pipe, its replacement with a wild flower mix will still contribute to BNG on the site.
47. It has been agreed that the provisions of the Environment Act 2021 do not apply to the proposal as it was submitted before they came into force. However, paragraph 180 d) of the Framework is applicable to the proposal which requires that development proposals deliver a BNG. Whilst the proposal does not deliver the 10% BNG required by the Environment Act 2021 I am satisfied that it would deliver a positive BNG and therefore complies with the provisions of the Framework in this regard.
48. Moreover, Policy NE3 of the HDLP supports proposals that provide a BNG. Therefore, as the proposal will provide a BNG it is in compliance with this policy of the development plan.
49. Overall whilst the proposal will result in the loss of grassland, scrub and some trees it will result in a BNG. Moreover, the proposal also makes provision for protected species located on or adjacent to the site. Therefore, I find that the proposal would have a positive impact on ecology and nature conservation.

Other Matters

Harrogate is above its housing target

50. The HDLP sets out the District housing requirement for its whole period. Delivery of housing within that period is not uniform and housing figures themselves do not impose a ceiling on overall housing numbers. In certain years, the delivery of new homes will be above target and in others it will be below. This position is set out in the Housing Trajectory set out on page 529 of the HDLP. Whilst it might appear that in the recent past and at the present time the Council is delivering above its housing numbers, it is clear from the Housing Trajectory that in the later years of the HDLP the delivery of housing is due to fall away. I therefore conclude that in terms of the Housing Trajectory set out in the HDLP that the District is not delivering significantly above this trajectory.

Contamination

51. The objectors to the proposal allege that due to its previous use as railway infrastructure the areas of the former railway embankments present on the site are contaminated. In particular they allege that the mineral railway that used to cross the site carried coal and contaminants might include coal, soot particle, polyaromatic hydrocarbons (PAHs), toxic metals and oils and lubricants.
52. As part of the consideration of the planning application the site has been assessed to see if it is contaminated and if it is to what level. These assessments have been carried out by a company with expertise in the area of contaminated land. The results of that assessment work have shown that any contamination on the site is unlikely to pose a risk to the current and future occupiers of the site and that there would be no significant risk to controlled waters.
53. Further tests were carried out following consideration of the proposal by the Planning Committee. This involved soil sampling and establishing boreholes on the site within the areas of the former railway embankments. These tests demonstrated that there was no significantly elevated contamination within any of the samples tested from across the site. The objectors have challenged these results arguing that the company doing the testing was not accredited to test for the likely contaminants, that the samples were held in the wrong type of container (both colour and material) and that the samples were out of date when tested.
54. I have had regard to both the arguments of the objectors and the research information submitted by the appellants. It is clear to me that the site itself has not been used specifically for industrial purposes and any contamination that does exist on the site would be as a result of material which was deposited by steam trains using the railway that once crossed the site and that would be concentrated at the site of the former railway embankments.
55. In view of the work carried out by the Appellants, the limited area of the site covered by the former railway embankments and the fact that the site was not used for an industrial activity in itself I consider that it is unlikely that the site contains significant amounts of contaminants. Moreover, an appropriately worded condition would be capable of ensuring that any contamination, not already identified, that might be present on the site, should the appeal be allowed, could be satisfactorily dealt with. I do not therefore consider that the presence or otherwise of contamination on the site is a reason to dismiss the appeal.

Flooding

56. The majority of the site is within Flood Zone 1. The north east corner of the site is in Flood Zones 2/3. However, this area is part of the open space/ecological area and will not form part of the housing site. Therefore, the site itself is in an area which is at the lowest risk of flooding to which the Government directs housing development.
57. It is proposed that surface water is directed towards the watercourses surrounding the site including the Oak Beck. It is proposed that measures are to be put in place that will limit the discharge from the site to the Oak Beck so that any discharge does not overwhelm the watercourse. As a result, the

statutory bodies responsible for flooding have no objections to the proposal. I have heard no evidence that contradicts this position.

58. In terms of sewers no objections from statutory bodies have been raised in terms of the capacity of the network. However, Yorkshire Water requires that planting is kept away from a sewer that crosses the site. Amendments to the landscaping scheme have addressed this concern. I consider therefore that the foul water generated by the site can be adequately dealt with.
59. Policy CC1 of the HDLP deals with flooding and sustainable drainage and seeks to support development which has an acceptably low risk of flooding. For the reasons given above I consider that the appeal proposal complies with this policy of the development plan.

Non-native invasive species

60. Surveys have drawn attention to non-native invasive species being present on the site. However, objectors have indicated that there are other non-native invasive species on or near the site which have not been taken into account. I observed on my site visit areas of non-native invasive species on the site. However, I consider that the presence of these species can be dealt with by an appropriately worded condition should I allow the appeal.

Living conditions of nearby residents

61. It was brought to my attention that the living conditions of the occupiers of 120 and 122 Knox Lane could be harmed by the proximity and level of some of the houses on the appeal site due to overlooking and the creation of an overbearing relationship. The appeal site is at a higher level than the houses at 120 and 122 Knox Lane. The dwellings on the appeal site at this point would be around 14 to 21 metres away from the side elevation of 120 Knox Lane.
62. Given that the relationship between the houses on the appeal site and 120 Knox Lane is rear elevation to side elevation these distances are normally acceptable. I do accept that the houses on the appeal site would be higher than 120 Knox Lane. However, I do not consider, given the distances involved and that the relationship is rear elevation to side elevation, that this would constitute an overbearing relationship that would unacceptably harm the living conditions of the occupants of 120 Knox Lane.
63. Policy HS4 and HP8 have been referred to in the evidence on this matter. However, HP8 relates to community facilities and is therefore not relevant. Policy HS4 refers to developments having significant adverse impacts on the amenity of occupiers and neighbours due to, amongst other things overlooking and overbearing. It is clear to me whilst the appeal proposal will change the outlook from 120 Knox Lane it will not lead to significant adverse impacts on privacy, nor will it have created an overbearing relationship for the reasons given above. The appeal proposal is therefore in compliance with planning policy with regard to this matter.

Effect on a Grade II listed building

64. The Spruisty Bridge a Grade II listed structure lies within 300m of the site. However, it is separated by housing and a considerable difference in levels. There is no intervisibility between the site and the bridge. Consequently, I

therefore consider that the appeal proposal would have no impact on the setting of this Grade II listed structure.

Proximity to powerlines

65. I heard representations that the proximity of the powerlines to the proposed dwellings might harm the health of the occupants, in particular increase the risk of childhood leukaemia. The scheme has been designed to take account of the advice of the operator of the powerlines Northern Powergrid. No substantive evidence was presented in the evidence to demonstrate a causal link between the proximity of power lines and a higher risk of leukaemia developing in children. The onus is on the objector to the proposed development to provide the evidence as to the risks in this case.
66. In the absence of evidence demonstrating an increased risk of leukaemia for those children living near power lines there is no justification for dismissing the appeal on these grounds.

Disturbance during the construction phase

67. It is inevitable during the construction of new houses that there will be some disturbance to those living near the site. However, this disturbance can be mitigated by having in place a construction management plan which control aspects of development such as hours of operation, deliveries etc. which might give rise to disturbance. I therefore consider that this matter is capable of being covered by an appropriate condition should the appeal be allowed.

Air quality

68. The issue of air quality and the likely effect the appeal proposal would have on air quality in the local area was raised in the representations. The appeal proposal does not lie in an area that is identified as having poor air quality. Moreover, the proposal would not introduce any activity that would significantly degrade the air quality in the area. Consequently, there is no conflict with Policy NE1 of the HDLP.

Planning history of the site

69. In terms of the earlier planning decisions these were clearly made before the HDLP was adopted and therefore are not relevant to the current decision. With regard to the recent decision regarding the garden extension this had to be dealt with on its own merits and in accordance with planning policy. It is clearly very different to the appeal proposal which is about the development of a site which is allocated in the HDLP. Criticism has also been made of the HDLP process which allocated the site. Whilst I have taken into account of the specific objections to the appeal proposal in this decision it is not my role to revisit the arguments made at the Examination into the HDLP.
70. Therefore, I do not consider that these previous planning decisions have a bearing on how I should treat this appeal proposal.

Lack of documentation and alleged inaccuracies

71. Whilst it is clearly a requirement of H2 that a Travel Plan is required as part of any proposal, the site is below the threshold where the Local Highway Authority would require a Travel Plan to be submitted automatically. Moreover, the Council did not request a Travel Plan prior to the proposal being considered by

the Planning Committee and its provisions are capable of being implemented through an appropriately worded condition should the appeal be allowed. Finally, a Travel Plan has been submitted as part of the appeal documentation and a condition has been suggested to ensure its implementation should the appeal be allowed. Therefore, and for the reasons given above I do not consider that the lack of a Travel Plan at the planning application stage is fatal to this proposal.

Levels at the entrance to the site

72. There was some debate at the Inquiry about the change in levels at the entrance to the site and in particular the difference in levels between parking areas and the access road. I was supplied with a large-scale plan which illustrated the level change identified. I acknowledge that there would be a significant change in levels in this area. However, I consider that any safety concerns can be addressed through the use of appropriate retaining walls and safety barriers, and this can be provided through the use of conditions. Consequently, any safety issues associated with the change in levels are capable of being addressed.

Planning Balance and Consistency with the Development Plan

73. The site is allocated as Policy H2 in the HDLP, and the plan is up to date. I give significant weight to the sites' allocation as this reflects the approach set out in both the Act and paragraph 11 of the Framework, which states, amongst other things, that development proposals that accord with an up-to-date development plan should be approved without delay.
74. Policy H2 of the HDLP has a set of development requirements that any proposal relating to this site must meet in order to be acceptable. I have found for the reasons given above that the development complies with these requirements, with the exception of the absence of a Travel Plan at the applications stage. However, a Travel Plan has been submitted with the appeal documentation and its implementation will be secured through a condition should the appeal be allowed. I therefore consider that the proposal complies with the development requirements of Policy H2.
75. Therefore, I give substantial weight to the delivery of the site against the requirements of the HDLP in that the proposal will assist in delivering the market housing requirements of the HDLP as well as the requirements for affordable housing.
76. Moreover, and in order to comply with the requirements of Policy H2 and the HDLP the proposal delivers a series of benefits, including the delivery of affordable housing, the delivery of market housing, ecological and environmental benefits and a benefit to the local economy during the construction phase and from increased trade in local businesses once the proposed dwellings are occupied. As any site which complies with the HDLP would have to deliver a similar range of benefits in order to be acceptable. I therefore give these moderate weight in this decision.
77. In terms of other matters, I give moderate weight to the harm that would be cause to the character and appearance of Knox Lane through the removal of trees and other vegetation in order to create the vehicular, cycle and pedestrian access at the entrance to the site. This harm would be compounded

by the proposals to widen the lane and the footpath. Overall, however I still give this harm moderate weight.

78. In terms of the other matters referred to above I either give them neutral or no weight in this decision for the reasons set out above.
79. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (Act) requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the appeal proposal complies with the Policies of the HDLP, indeed the site is allocated in that plan. As such it delivers the aims and the benefits of that plan in terms of market housing and affordable housing. I give substantial weight to the compliance of the site with the HDLP and the consequent benefits it brings in this respect.
80. In terms of other benefits these are consequent upon the requirements of the Policy and as such I have given them moderate weight for the reasons set out above.
81. In terms of harm, I have given moderate weight to the harm the proposal causes to the character and appearance of Knox Lane for the reasons set out above.
82. Overall, as the proposal concerns the development of a site allocated in the HDLP and complies with the Policies of the development plan to which I give substantial weight. I therefore conclude that the benefits of the proposal substantially outweigh the harm I have found.

Planning Obligation and Unilateral Undertaking

83. The appellants have submitted both a signed s106 Planning Agreement (PA) and a signed s106 Unilateral Undertaking (UU). The s106 PA covers matters that relate to: the provision of 40% affordable housing (21 units); a contribution towards the provision of off-site public open space; a contribution towards the maintenance of the open space to be provided within the development; a contribution towards healthcare facilities; a contribution towards education facilities; the provision of sums to monitor the travel plan and ecological matters and an overall fee for the monitoring of the agreement itself. The UU makes provision for an additional 9 affordable housing units taking the affordable housing provision up to 30 (57%).
84. In order to be acceptable both the PA and the UU need to comply with the Community Infrastructure Levy Regulations (the CIL Regs) 2010 and whether they meet the tests set out at paragraph 57 of the Framework. These tests are defined as whether the UU and PA are;
- 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.
85. In terms of the PA, it makes provision for the delivery of 21 affordable houses which equates to around 40% of the units. Policy HS2 of the HDLP sets out the position with regard to the provision of affordable housing. This identifies a clear need, and the policy provides a mechanism for the delivery of the affordable housing. I therefore consider that the provisions of the PA that relate

to the delivery of affordable housing on the site comply with the three tests set out above.

86. Policy T14 of the HDLP sets out the infrastructure that new developments are required to provide or contribute to the provision of healthcare, education and recreation and open space facilities. This policy is supported, in some cases, by Supplementary Planning Documents and formulas are used to calculate the amount of the contribution.
87. It has been argued that a contribution is not required for some of these areas as people will be relocating within Harrogate and therefore these will not be 'new' people, but people who already use facilities in the area. Whilst I have had regard to this argument it is clear to me that even if people are relocating from within Harrogate they will leave vacant accommodation that potentially will be reoccupied. Therefore, the pressure on these service in Harrogate will potentially increase as a result of the appeal proposal.
88. I therefore consider that a contribution towards the provision of off-site open space, healthcare and education comply with the tests set out above.
89. Finally, the PA makes provisions for contributions towards the maintenance of the on-site open space, the monitoring of the travel plan and the monitoring of the ecological provisions and the Councils' administrative costs. These contributions are necessary in order to ensure that the proposal functions as planned, and the scale of the contributions are proportionate to the development. I therefore find that they meet the three tests set out above.
90. The appellant has also provided a UU which seeks to ensure that they provide an additional 9 affordable housing units which would take the affordable housing units on the site to 30 or 57%. The Council as part of Policy HS2 do not require this amount of affordable housing to be provided on this site. Moreover, s106 agreements are not the only method of providing for affordable housing in the District.
91. However, there has been an under delivery of affordable housing against the target in recent years and the over delivery of affordable housing on this site would help to address that shortfall. Furthermore, whilst Policy HS2 requires qualifying sites to deliver 40% affordable housing it also states in the justification that this is a starting point for decision making. This implies to me that the 40% target for affordable housing on qualifying sites can go up as well as down.
92. Consequently, given the need for affordable housing in Harrogate, the shortfall in delivery in previous years and the policy position as set out in the previous paragraph I consider that the UU complies with the tests set out at paragraph 72 above.

Conditions

93. In addition to the standard condition related to the commencement of development required by the Town and Country Planning Act 1990 there are other conditions which should be placed on any grant of planning permission should I be minded to allow the appeal.
94. A condition is required specifying the plans to which the permission relates for the avoidance of doubt and to give clarity to the decision.

95. A condition is required to ensure that the materials used in the construction of the dwellings are compatible with the character and appearance of the local area.
96. An hours of operation condition, including the times deliveries are permitted, is needed in order to protect the living conditions of those living near the site.
97. A condition requiring the submission, approval and implementation of a Construction Management Plan is needed in order to control any emissions from the site in order to protect the living conditions of those living near the site.
98. Notwithstanding the provisions of the Building Regulations in relation to this matter, a condition is necessary to ensure that the charging of electric vehicles is provided for within the development, to ensure that residents have access to a wide range of transport choices.
99. A condition is necessary to cover the other aspects of the construction of the site that might cause disturbance to people living nearby in order to protect their living conditions.
100. A condition is necessary in order to ensure that the roads on the site are constructed to the correct standard in the interests of public and highway safety.
101. A condition is necessary to ensure that the estate road and footways and all off-site works are installed to the correct standard before the dwellings are occupied in the interests of highway safety and to protect the living conditions of the residents.
102. A condition is necessary in order to ensure that the access ways, parking and manoeuvring areas have been constructed to the appropriate standard. I have slightly amended the condition so that the trigger is on the occupation of the first dwelling and not on the commencement of use in the interests of clarity. I consider that the condition is necessary in the interests of public and highway safety, and the living conditions of the occupants.
103. In terms of the condition requiring adherence to the Travel Plan I have amended this condition to make it more precise by specifying the tables in the Travel Plan that set out the actions to be taken and by whom. This condition is necessary to ensure that the approved travel plan is implemented and operated in accordance with the agreed details, in order to give occupants, the opportunity to access services by means other than the private car.
104. In terms of conditions requiring further work to assess whether any contamination is present on site I have amended this condition to include further soil sampling and testing. These conditions are necessary to ensure that further investigation of contamination on the site is carried out and that any need for remediation identified is implemented in accordance with an agreed programme of works, in order to ensure that appropriate measures are taken to protect the health and safety of those that might be affected.
105. Notwithstanding the need for further work to investigate potential contamination which might be present on the site, a condition is necessary in order to deal with any further contamination which might be encountered

- during the implementation of the development. In order to protect the health and safety of those that might be affected.
106. A condition is necessary to ensure that any top soil that might be imported on to the site is free from contamination in order to protect the health and safety of those that might be affected.
107. A condition is necessary in order to ensure that crime prevention principles are built into the development in the interests of public safety.
108. A condition is necessary to ensure that the details of boundary treatments are approved prior to installation including how the stonewall along Knox Lane is to be rebuilt following the construction of the access in the interest of public safety and maintaining the character and appearance of the area.
109. A condition is necessary to ensure that any external lighting installed within the development is approved by the Council, in order to ensure that the ecology of the area is not harmed and in the interests of public safety.
110. A condition is necessary to ensure that surface and foul water discharge to separate systems, to ensure that the site is adequately drained.
111. A condition is necessary to ensure that the line of the public sewer crossing the site is protected from encroachment by vegetation, to ensure that the operation of the public sewer is not affected by the development.
112. A condition is necessary to ensure that water is not discharged from the site until the drainage system is installed, to ensure that the site is adequately drained.
113. A condition is necessary to ensure that the drainage system is constructed in accordance with the approved details, to ensure that the site is adequately drained.
114. A condition is necessary to control the implementation and management of the drainage system, to ensure that the site is adequately drained, and that system is maintained to ensure its effectiveness in the long term.
115. A condition is necessary to ensure that any air source heat pumps installed on the site do not become a noise nuisance in order to protect the living conditions of those living nearby.
116. A condition is necessary to protect the occupants of the dwellings from external noise sources in order to protect their living conditions.
117. A condition is necessary to ensure that existing trees are protected during the construction period so that they are not harmed during this phase of work and the character and appearance of the area is protected.
118. A condition is necessary to ensure that the recommendations of the tree report submitted during the application process are implemented in order to protect the trees on the site and the character and appearance of the area.
119. A condition is necessary to ensure that the trees are protected on an on-going basis during the construction phase in order to ensure that the trees on site are retained in good health during this phase of the development and therefore continue to contribute to the character and appearance of the area.

120. Conditions are necessary to ensure that the replacement trees proposed in the planning application are planted and that any of the trees or shrubs planted as part of the planting scheme are replaced if they are removed or die, in the interests of the character and appearance of the locality.
121. Conditions to control finished floor levels are necessary due to the changes in levels on the site in order to protect the living conditions of neighbouring occupiers and the visual appearance of the area
122. A condition is necessary to ensure that the Construction Ecological Management Plan (CEcMP) is implemented in order to protect the wildlife present on the site and ensure that non-native invasive species are adequately dealt with.
123. A condition is necessary to ensure that a further badger survey is undertaken to ensure that the species is protected when construction begins.
124. A condition is necessary to secure the implementation of an interpretive panel in the most appropriate location prior to the occupation of the first dwelling, in the interests of the heritage of the local area.
125. Conditions are necessary to ensure that an appropriate proportion of the affordable and market houses are accessible and suitable for wheelchair users and that these requirements are implemented in the completed dwellings to ensure that some of the dwellings are accessible by all.

Conclusion

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals for planning permission should be determined in accordance with the development plan unless other material considerations indicate otherwise. I have found that the proposed development complies with the requirements of the development plan for the area and that the other material considerations raised do not indicate that the appeal should be dismissed, therefore the appeal is allowed.

P.M.Sturgess

INSPECTOR

APPENDIX A

APPEARANCES

For the Council:

Elana Kaymer	Barrister
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Instructed by the Solicitor for North Yorkshire Council

For the Appellant

Freddie Humphreys	Barrister
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Instructed by Will Swarbrick, Squire Patton Boggs, Solicitors

He called:

David Rolinson BA(Hons), Dip PEL, MRTPI	Spawforths – Planning
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Scott Lunn BA(Hons), Dip Arch, RIBA ³	Design
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Dan Charnley BA(Hons), MA, CMLI ⁴	Landscape
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Paul Irwin, BSc(Hons), MSc(Eng), MIHT ⁵	Traffic and Transport
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Interested Parties

Knox Community Conservation Group

Ms Victoria Austin	Planning Matters
Mrs Val Rodgers	Planning Matters (Sustainability)
Mrs Carole Harrison	Planning Matters (Amenity)
Mr Theo Street	Highway Matters Lead
Mrs Adele Laurie-Wilson	Landscape Matters Lead
Dr Damian Brown	Land Contamination
Mr Keith Wilkinson MBE	Flooding and Water Quality
Mr Stephen Readman	Ecology Matters Lead

Others who spoke

Councillor Paul Haslem	Local Councillor
Dr Robert Ray	Local Resident
Mr Peter Fryer	Local Resident
Mr Christopher Dunn	Killinghall Parish Council

Members of the Press Present

Thomas Barrett	Harrogate Advertiser
Calvin Robinson	Stray Ferret

³ Round Table Session only

⁴ Round Table Session only

⁵ Round Table Session only

APPENDIX B

INQUIRY DOCUMENTS

ID1	Appellants List of Attendances
ID2	Email from Stephen Readman to Paul Haslem, Trespass
ID3	Letter (with appendix) Harrogate Civic Society, Extent of Knox Hamlet
ID4	Statement to the Inquiry, Mr Fryer
ID5	Plan showing relationship between plots and 120 and 122 Knox Lane
ID6	Opening Statement on Behalf of the Council
ID7	Written Statement, Preliminary Matters, Ms Victoria Austin
ID8	Statement read by Cllr Haslem
ID9	Written Statement, Planning Matters, Ms Victoria Austin
ID10	Written Statement, Planning Matters Sustainability, Mrs Val Rodgers
ID11	Written Statement, Landscape Amenity, Mrs Carole Harrison
ID12	Written Statement, Highways Matters, Mr Theo Street
ID13	BNG Calculation, Mr Readman
ID14	Written Statement, Landscape Matters, Special Landscape Area, Trees, Ms Adele Laurie-Wilson
ID15	Written Statement, Land Contamination, Dr Damian Brown
ID16	Written Statement, Landscape Matters (Flooding and Water Quality), Mr Keith Wilkinson MBE
ID16a	Yorkshire Water Letter in connection with Mr Keith Wilkinson's Written Statement
ID17	Written Statement, Ecology/Biodiversity, Mr Stephen Readman
ID18	Written Statement, Dr Robert Ray
ID19	Email exchange – Sewer Easement – 23 July 2024
ID20	List of Third Parties who wish to speak
ID21	Email exchange – Biodiversity Calculations
ID22	Levels Plan
ID23	Closing submissions Knox Community Conservation Group
ID24	Appellant's Closing Submissions

APPENDIX C

CONDITIONS

1. The development hereby permitted shall be begun on or before 3 years from date of this permission.
2. The development hereby approved shall be carried out in accordance with the submitted details as amended by other conditions of consent and the following approved plans:
 - o Location Plan: 3308-1-000 A
 - o Proposed Site Layout: 3308-1-001-DD
 - o House Type A: 3308-1-022 Rev E
 - o House Type B: 3308-1-023 Rev E
 - o House Type C: 3308 - 024 Rev F
 - o House Type D: 3308-1-025 Rev D
 - o House Type E: 3308-1-026 Rev D
 - o House Type F: 3308-1-027
 - o House Type G: 3308-1-028 Rev G
 - o House Type H: 3308-1-029 Rev D
 - o House Type I: 3308-1-030 Rev C
 - o Plans and Elevation AP A and AP B: 3308-1-020 Rev F
 - o Plans and Elevation AP C and AP D: 3308-1-021 Rev E
 - o Plans and Elevation AP E and AP F: 3308-1-031 Rev E
 - o Landscape Layout: 4566 101B
 - o Landscape Section A-A1: 4566 301
 - o Landscape Section B-B1: 4566 302
 - o Landscape Section C-C1: 4566 303
 - o Site Levels: C-0106 Rev P6 and 3308 1 003 P1
3. Prior to the commencement of the exterior external walling of the development hereby approved samples of external materials and /or a schedule of materials must be submitted for the written approval of the local planning authority for the external walls and roof of the development. Thereafter the approved materials must be implemented unless a variance of the schedule has at first been agreed in writing by the Local Planning Authority.

4. Except in case of emergency no demolition and construction work or ancillary operations, including deliveries to and dispatch from the site which are audible beyond the boundary of the site shall take place on site other than between the hours of 08:00-18:00 Monday to Friday and between 09:00- 13:00 on Saturdays. The Local Planning Authority shall be notified at the earliest opportunity of the occurrence of any such emergency and a schedule of essential work shall be provided.
5. The development shall not be commenced until a construction management plan specifying the provisions to be made to control dust and noise emanating from the site has been submitted to and approved in writing by the local planning authority. The agreed scheme shall then be implemented in full before the proposed development is started, including demolition and site clearance.
6. An electric vehicle infrastructure strategy and implementation plan must be submitted to and approved in writing by the Local Planning Authority prior to the occupation of any dwelling hereby permitted. The plan should contain a charging point dedicated to each dwelling and should be of Mode 3 type (specific socket on a dedicated circuit with a minimum current rating of 16 Amp). Buildings and parking spaces that are to be provided with charging points should not be brought into use until associated charging points are installed in strict accordance with the approved details and are operational. The charging points installed must be retained thereafter.
7. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved plan.

The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:

- a. details of any temporary construction access to the site including measures for removal following completion of construction works;
- b. No HGV deliveries to site shall take place before 9.30 or after 16:00;

- c. wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
 - d. the parking of contractors' site operatives and visitor's vehicles;
 - e. areas for storage of plant and materials used in constructing the development clear of the highway;
 - f. details of site working hours;
 - g. A full Highway condition survey from the proposed access to Crab Lane.
 - h. contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.
8. Except for investigative works, no excavation or other groundworks or the depositing of material on site in connection with the construction of any road or any structure or apparatus which will lie beneath the road shall take place on any phase of the road construction works, until full detailed engineering drawings of all aspects of roads and sewers for that phase, including any structures which affect or form part of the highway network, and a programme for delivery of such works have been submitted to and approved in writing by the Local Planning Authority. The development must only be carried out in compliance with the approved engineering drawings.
9. No dwelling hereby permitted shall be occupied until the carriageway and any footway or footpath from which it gains access is constructed to binder course macadam level or block paved (as approved) and kerbed and connected to the existing highway network with any street lighting installed and in operation. The completion of all road works, including any phasing, must be in accordance with a programme submitted to and approved in writing with the Local Planning Authority before the commencement of the construction of any dwelling hereby permitted.

The following schemes of off-site highway mitigation measures must be completed as indicated below:

Knox Lane must be widened to 5.5 metres in width from the proposed development access to the start of the kerb at Knox Sawmills, to the satisfaction of the Local Highway Authority.

For each scheme of off-site highway mitigation, except for investigative works, no excavation or other groundworks or the depositing of material on site in connection with the construction of any scheme of off-site highway mitigation or any structure or apparatus which will lie beneath that scheme must take place, until full detailed engineering drawings of all aspects of that scheme including any structures which affect or form part of the scheme have been submitted to and approved in writing by the Local Planning Authority.

A programme for the delivery of that scheme and its interaction with delivery of the other identified schemes must be submitted to and approved in writing by the Local Planning Authority prior to construction works commencing on site.

Each item of the off-site highway works must be completed in accordance with the approved engineering details and programme unless otherwise approved in writing by the Local Highway Authority.

- 10.No dwelling hereby permitted shall be occupied until the access, parking, manoeuvring and turning areas for all users have been constructed in accordance with the details approved in writing by the Local Planning Authority. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.
- 11.Prior to the occupation of first dwelling hereby permitted, the actions set out in the Travel Plan (reference 3908. V.1.1), and specifically the actions identified at tables 4 and 5 approved Travel Plan, received by the Council on 6th February 2024, shall be implemented and thereafter operated in accordance with the agreed details.
- 12.Groundworks shall not commence until a land contamination Phase II Intrusive Site Investigation Report, including the results of further soil sampling analysis, has been submitted to and approved in writing by the Local Planning Authority.

13. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 12 groundworks shall not commence until a land contamination remediation strategy has been submitted to and approved in writing by the local planning authority. The remediation strategy shall include a timetable for the implementation and completion of the approved remediation measures
14. Land contamination remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 13. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report is identified or encountered on site, all groundworks in the affected area (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the local planning authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
15. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a land contamination Verification Report shall be submitted to the local planning authority. No part of the site shall be brought into use until such time as the remediation measures have been completed for that part of the site in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Verification Report in respect of those remediation measures has been approved in writing by the local planning authority. Where verification has been submitted and approved in stages for different areas of the whole site, a Final Verification Summary Report shall be submitted to and approved in writing by the Local Planning Authority.
16. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all groundworks in the affected area (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2

working days. Groundworks in the affected area shall not recommence until either:

(a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority; or

(b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.

Following completion of any measures identified in the approved Remediation Strategy a Verification Report shall be submitted to the local planning authority. No part of the site shall be brought into use until such time as the site has been remediated in accordance with the approved Remediation Strategy and a Verification Report in respect of those works has been approved in writing by the local planning authority.

17.If any topsoil is taken onto site for the formation of a domestic garden it should be certified as suitable for a domestic garden. This should be validated through sampling once on site.

18.Prior to the commencement of development details of how Secured by Design principles have been incorporated into the scheme shall be submitted for the written approval of the Local Planning Authority and once approved thereafter implemented prior to the occupation of any of the units hereby approved.

19.Details of the proposed boundary treatments must be submitted for the written approval of the Local Planning authority. The existing stone wall to the Knox Lane frontage must be retained and realigned as necessary in accordance with the approved boundary treatment plan.

20.Prior to the construction of the external walling of the development a lighting scheme must be submitted for the written approval of the Local Planning Authority. The scheme must take into account the comments of the Police designing out Crime officer and ecological requirements for the site.

21. The site shall be developed with separate systems of drainage for foul and surface water.

22. No building or other obstruction including landscape features, shall be located over or within 5 (five) metres either side of the centre line of the public sewers i.e. a protected strip width of 10 (ten) metres, that crosses the site. If the required stand-off distance is to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.

Landscape features is defined as planting scrub, hedges, shrubs and trees. This however does not include habitat creation through grass or wildflower meadow.

23. 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 submitted to and approved by the Local Planning Authority.

24. The development hereby approved shall be carried out in accordance with the proposed drainage strategy "Drainage Proposals Toppings Engineers - Drawing No C-0105 Revision P7 Received December 2022" unless an otherwise agreed alternative is at first agreed in writing with the Local planning Authority.

25. No development shall take place until details of the implementation, adoption, maintenance and management of the sustainable drainage system shall have been submitted to and approved in writing by the local planning authority. Those details shall include:

- a timetable for its implementation; and,
- a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details

- 26.If air source heat pumps are to be installed at the proposed dwellings the location and noise level associated with the operation of the units should be considered to ensure they do not give rise to a noise nuisance to existing and proposed dwellings in proximity to it.

The rating level of sound emitted from the air source heat pump and any associated equipment shall not exceed background sound levels (taken as a LA90 at the nearest sound sensitive premises) in accordance with the methodology of BS4142 (2019) (Method for rating and assessing industrial and commercial sound) and/or its subsequent amendments.

Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound-sensitive property.

Any deviations from the LA90 time interval stipulated above shall be agreed in writing with the local planning authority

- 27.Before construction work commences a report specifying the measures to be taken to protect the future occupants of the proposed dwellings from noise shall be submitted to and approved in writing by the LPA.

The report shall:

- a) Determine the existing noise environment.
- b) Predict the noise climate in the gardens, living rooms (daytime), bedrooms (night-time) and other habitable rooms of the development.
- c) Detail the proposed attenuation/design necessary to protect the amenity of the occupants of the new residences (including ventilation if required).

The development shall not be occupied until all works specified in the approved report have been carried out in full and such works shall be thereafter retained.

28. Before any development or construction work begins, a pre-commencement meeting shall be held on site and attended by the developers appointed arboricultural specialist, the site manager/foreman and a representative from the Local Planning Authority (LPA) to discuss details of the working procedures to ensure that all tree protection measures have been installed in accordance with the approved root protection area (RPA). The development shall thereafter be carried out in accordance with the approved details, or any variation as may subsequently be agreed in writing by the LPA.
29. No development shall commence on site before the approved tree report detail (Elliot Consultancy AIA, AMS and TPP report dated December 2022, reference ARB/AE/1630) including root protection area (RPA) fencing in line with the requirements of British Standard BS 5837: 2012 (section 6.2.2 figure 2) Trees in Relation to Construction - Recommendations, or any subsequent amendments to that document, around the trees or shrubs or planting to be retained, as indicated on the approved plan. The developer shall maintain such fences until all development subject of this permission is completed and implement the tree reports recommendations.
30. Prior to works commencing on site an Arboricultural Oversight Statement (AOS) is to be submitted for approval by a suitably qualified and pre-appointed tree specialist. The AOS will outline the schedule of site supervision and monitoring of the arboricultural protection measures as approved in the above condition (Elliot Consultancy AIA, AMS and TPP report dated December 2022, reference ARB/AE/1630). The AOS will outline a regular site visit regime noting the responsible officers, contacts and reporting to the LPA. The AOS will be retained for the duration of the build phase in line with the submitted detail using the LPA arboricultural section for guidance as issues arise. This condition may only be fully discharged on completion of the development, subject to satisfactory written evidence of compliance through contemporaneous supervision and monitoring of the tree protection throughout construction by a suitably qualified and pre-appointed tree specialist.
31. A scheme for replacement tree planting shall be submitted for the written approval of the local planning authority in accordance with the details submitted in the arboriculture report at 22 trees for each tree removed. Details of species,

size and siting shall be agreed in writing with the local planning authority together with the timing of planting. Thereafter the trees shall be planted in accordance with the agreed scheme.

32. In the event of failure of any trees or shrubs, planted in accordance with any scheme approved by the Local Planning Authority; to survive for a period of five years from the date of the completion of implementation of that scheme, such trees or shrubs shall be replaced by the developer with such live specimens of such species in such number as may be approved by the Local Planning Authority.

33. The development shall be carried out in strict accordance with the details indicated within the submitted site levels drawing (reference C-0106 Rev P6), unless otherwise agreed in writing with the Local Planning Authority.

34. Prior to commencement of any part of the development hereby permitted a detailed plan indication existing site levels and proposed finished ground floor levels of the development shall be submitted to and approved in writing by the Local Planning Authority. The detailed plan to be submitted shall include the precise finished ground floor levels of the new dwellings relative to the existing development on the boundary of the site, including the adjacent highway and adjacent properties.

Thereafter, the development shall be carried out and completed strictly in accordance with the approved details prior to any occupation of the dwellings hereby permitted.

35. Construction Ecological Management Plan, based on the recommendations of section 5 of the Ecological Impact Assessment (Document Ref: SHA-17-11-R9, received 08/12/2022) must be submitted for the written agreement of the local planning authority prior to the commencement of works (including site preparation and access works). The CEcMP must include appropriate precautions to be taken during the course of works, to avoid harm to nesting birds and bats and terrestrial mammals (including surveys for bat roost potential for any additional tree-removal that may be proposed) and to prevent the spread of non-native invasive species. In particular, no works must be undertaken in areas which have been identified as supporting non-native invasive species until a

scheme has been agreed to prevent its spread including that of its seeds in the surrounding soil. The CEcMP must provide for the inclusion of integrated bat and swift bricks, a sensitive lighting scheme for the development and the provision of access to gardens by hedgehogs. All subsequent works must be undertaken in accordance with the agreed CEcMP and a copy of the CEcMP must be available on site for access by site operatives at all times during construction.

36. An updated badger survey must be undertaken prior to the start of any site clearance works within the 30-meter zone around currently active badger setts, identified in Figure 5 of the Badger Survey Report (R5, Naturally Wild, August 2022) to confirm which holes are currently active and to ensure that the exclusion zones proposed to be implemented remain appropriate. The updated survey report must be submitted for the written approval of the local planning authority, prior to the commencement of works.

Badgers must be excluded from the built footprint of the development during construction. In particular, a 30-meter buffer zone must be established, using heras-type fencing, around any active sett entrances and works within that zone should only be undertaken with the specific written permission of the badger licence holder to ensure that they do not breach the terms of the licence. A record of any such permitted works must be made available to the local planning authority on request.

Works must be undertaken strictly in accordance with the mitigation, compensation and enhancement measures set out in section 5 of the Badger Survey Report (R5, Naturally Wild, August 2022). Any changes to these proposals, required as result of updated surveys or to meet the requirements of a Natural England licence, must be agreed in writing with the local planning authority prior to their implementation.

37. Prior to the first occupation of the development hereby approved the developer shall submit details of the interpretation/ information panel identifying Spruisty Bridge and the Harrogate Ringway together with a scheme identifying when and where the interpretation/ information panel will be provided, and this is to be agreed in writing with the Local Planning Authority.

38.No development shall take place until drawings illustrating that the 25% of the market and subject to site suitability all affordable dwelling(s) hereby permitted complies with Building Regulation (M4(2) 'accessible and adaptable dwellings' have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the occupation of the building.

39.No development shall take place until drawings illustrating that 10% of the affordable dwelling(s) hereby permitted comply with Building Regulation requirement M4(3) 'wheelchair user dwellings' have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the occupation of the building.

END



Costs Decision

Inquiry Held on 23-24 July 2024

Site visit made on 24 July 2024

by Peter Mark Sturgess BSc(Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2024

Costs application in relation to Appeal Ref: APP/U2750/W/24/3341645
Land at Knox Lane, Harrogate, North Yorkshire, HG21 3DE (East 429757
North 457261)

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Jomast for a full award of costs against North Yorkshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for full planning application for 53no residential dwellings with associated parking, public open space and landscaping.
-

Decision

1. The application for a full award of costs is allowed, in terms set out below.

Preamble

2. The application for a full award of costs by the Applicant, the Council's response to that application and the final response by the Applicant were all received prior to the opening of the Inquiry. I asked at the Inquiry whether any party wanted to add to these written submissions and no party did. I shall therefore base my costs decision on the information submitted by the parties in writing prior to the Inquiry.
3. The Planning Practice Guidance (PPG) advises that parties to planning appeals are expected to meet their own costs. Costs can be awarded where, amongst other things, the following conditions apply: the party against whom a cost award is sought has behaved unreasonably and that unreasonable behaviour has caused the party applying for the costs to incur wasted or unnecessary expenditure in the appeal process.

The case for the Applicant

4. The Applicant has argued that the appeal should not have been necessary as the proposal was recommended for approval by the professional officers of the Council and the site is allocated for housing in the Local Plan. Furthermore, there are no reasonable grounds for overturning the professional officer's recommendation. Moreover, the determination of the proposal was delayed numerous times for reasons that would not have amounted to defensible reasons for refusal and that the Councillors did not consider the benefits of the

proposal when they made their decision. This has led them to waste expenditure on an appeal which should not have been necessary.

The case for the Council

5. The Council on the other hand has argued that it is not bound to accept the advice of its officers in making planning decisions. Councillors are free to make up their own minds and going against officer advice is not an example of unreasonable behaviour.
6. As is evidenced by the Committee Report, the Councillors did take the benefits of the proposal into account when they made their decision. Whilst the application was deferred a number of times with members making several requests for further information this was members taking their role seriously and ensuring that they dealt with the proposal thoroughly. The decision not to defend the appeal is not an example of unreasonable behaviour and it has cooperated with the applicant since it made the decision not to defend the appeal. Therefore, even if unreasonable behaviour leading to the applicant to incur wasted or unnecessary expenditure is found, only a partial award of costs should be made.

Reasons

7. The Council are entitled to take a decision contrary to the advice of its professional officers and that in itself is not grounds for an award of costs. However, in any appeal the Council must produce evidence to substantiate its decision. This is contained in the Written Ministerial Statement (WMS) referred to by the applicant where it refers to finding "*reasonable grounds for the Committee having overturned the officer's recommendation*".
8. It is clear to me that some of the deferrals of the decision on the application for more information were not necessary as they would not have formed a reason for refusal as they were either capable of being dealt with by condition (contaminated land), were not planning matters (the existence of a covenant) or were dealt with in either case law or the consultees response (the proximity of the electricity transmission lines to the houses). However, the PPG states that costs incurred during the application process cannot be claimed for. Despite this it is clear that the Council did not process the application in the most efficient manner and this in turn led to the decision to refuse the appeal proposal.
9. However, I do consider that the Council took into account the benefits of the scheme as is evidenced from the comprehensive officer's report which was before them when they made their decision on the application. They just did not agree, without any real reasonable grounds, with the recommendation.
10. The Council have chosen not to defend the appeal and offered no evidence at the Inquiry. This has meant that the applicant has had to present their case at the Inquiry through the submission of proofs of evidence, the attendance of Counsel and expert witnesses. Whilst this has reduced the sitting time of the Inquiry, thereby mitigating to a certain extent the expense incurred, it has meant that the Applicant has incurred costs in defending the appeal at the Inquiry which should not have been necessary, had the Council adopted this position prior to the decision to refuse the planning application.

11. The Council's decision not to defend the appeal at the Inquiry is tantamount to acknowledging that it had no case when it made the decision to refuse the planning application at Committee. The appeals system expects the parties to be able to justify their positions at Inquiry with evidence, even if that evidence is ultimately not strong enough to result in the appeal being decided in their favour. The Council did not do this, even though they were advised by their officers that the appeal proposal should be granted. Bearing in mind the WMS, the Council were not able to find reasonable grounds for having overturned the Officer's recommendation.
12. The Council's justification for changing its mind on the appeal proposal during the appeal process is that it took legal advice. That is not a credible position as legal advice would have been available to it prior to the planning application being considered by the Planning Committee. Moreover, the matters at issue in this appeal are not strictly speaking legal matters, they are planning matters upon which they had the advice of their Officer's when making the original decision. Furthermore, these matters did not change between the Committee's decision to refuse the planning application and the Council's decision not to defend the appeal.
13. I commend the Council for engaging with the appellant and the objectors during the appeal process to assist with the smooth running of the Inquiry. However, this still means that the Applicant has incurred wasted and unnecessary expenditure in both preparing for, attending the Inquiry and presenting evidence. Albeit this time and expenditure would have been reduced by not having to examine the Council's case or cross examine witnesses. Therefore, a full award of costs is justified.
14. I therefore find that the application succeeds, and I consider that the Council should pay the Applicant's costs for the wasted and unnecessary expenditure incurred in having to make this appeal and present its case at the Inquiry.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Yorkshire Council shall pay to the Jomast the full costs of the appeal proceedings described in the heading of this decision.
16. The Applicant is now invited to submit to the Council, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement as to the amount. In the event the parties cannot agree on the amount, a copy of the guidance notes on how to apply for a detailed assessment by the Senior Courts Costs Officer is enclosed.

P.M. Sturgess

INSPECTOR