



Appeal Decision

Hearing held on 25 and 26 June 2025

Site visit made on 26 June 2025

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Appeal Ref: APP/U2750/W/25/3361677

Land off Carr House, Snainton, Scarborough YO13 9BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant planning permission.
- The appeal is made by Mr Iain Godfrey of Mulgrave Developments Ltd against the decision of North Yorkshire Council.
- The application Ref is ZF24/00223/FL.
- The development proposed is the demolition of an agricultural barn and the erection of 19 dwellings together with the extension and conversion of the existing dwelling to form two houses, with associated access from and works to Green Lane, drainage and landscaping.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by North Yorkshire Council against Mulgrave Developments Ltd. This application is the subject of a separate decision.

Preliminary Matters

The Plans

3. The planning application submitted to the Council was accompanied with a suite of plans. Included within those were the Proposed Location Plan which outlined the appeal site subject of the proposed development in red. A Proposed Site Layout (1292.04) and Detailed Landscape Proposals (4033/1 Revision B) were also submitted. Supporting information was also provided. Collectively they are the "Original Scheme" and they were all subject of public consultation. The proposal falls entirely within the land edged red on the Proposed Location Plan.
4. Further supporting information was submitted during the planning application in May and June 2024. Further, on 5 August 2024 the appellant submitted a revised Proposed Site Layout (1292.04 Revision A) ("Amended Layout") and a Bat Survey and Assessment, dated August 2024 in response to comments that had been made. The parties disagree as to whether the documents submitted on 5 August 2024 formed part of the Council's determination as the Council informed the appellant that it would not consider any further information in 17 July 2024¹. The Council confirmed at the hearing that further public consultation was not carried out after the Amended Layout was submitted. Further, even if the Amended Layout was placed on the public portal on 21 August 2025, the appellant recognises that a footpath, a proposed boundary fence, and a gated access near to South Lodge Farm shown on the Amended Layout were outside of the land edged red detailed

¹ Appendix 6, Council Statement of Case

on the Proposed Location Plan. Thus, the Amended Layout does not accord with Article 7(c)(i) of The Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended) ("DMP").

5. Furthermore, those parts outside of the land edged red also appear to relate to land that is owned by other people who were not served notice. No other land was outlined in blue on the Proposed Location Plan, and certificate B on the planning application form detailed the names of two individuals on whom notice of the planning application was served upon. At the least, these do not include the owner of South Lodge Farm. I cannot therefore be certain that the appellant has served notice on all the relevant landowners in accordance with DMP Article 13(1). There is also no certainty that the development outside of the site edged red could have been carried out as it relates to other people's land.
6. On 6 September 2024 the appellant contends that further information comprising of Proposed Site Layout (1292.04 Revision B) and Detailed Landscape Proposals (4033/1C) ("Further Amended Layout") were submitted. A Biodiversity Net Gain ("BNG") Assessment Report, a Preliminary Ecological Appraisal ("PEA"), and a BNG Metric, all dated September 2024, are said to have been submitted ("Further Amended Information").
7. The Council say that the link in the email to the documents did not work and the email did not state what the documents were. Thus, they were unable to confirm if the documents were submitted before the decision was made on the same day. In any event, a proposed boundary fence, and a gated access near to South Lodge Farm as shown on the Further Amended Layout would have lay outside the site edged red. Thus, the same points apply to this revision as they do to the Amended Layout, in terms of public consultation and DMP Articles 7(c)(i) and 13(1).
8. The appellant submitted a revised Proposed Site Layout (1292.04 Revision D) ("the Revised Layout"), and a revised Detailed Landscape Proposals (4033/1F) ("the Revised Landscape Proposals"), a PEA, a Bat Survey and Assessment, a BNG Assessment, all dated February 2025, and a Revised Viability Assessment ("RFVA") with the appeal. It is common ground that these documents were not before the Council when it determined the planning application and that they have not been the subject of public consultation. The Revised Layout also included development that is outside of the site edged red. Hence, the appellant submitted a new Proposed Site Layout (1292.04 Revision D.a) shortly before the hearing ("the Amended Revised Layout"). The Amended Revised Layout ensures that the proposed development, save for the proposed changes to the Green Lane/Middle Lane junction, would all lie within the site edged red.
9. The proposed works to this junction would take place on highway authority-maintained land. Given that the highway authority is aware of the Amended Revised Layout, no prejudice would arise from notice not having been served upon them and certificate B on the planning application form not being filled in.
10. Prior to the hearing, the appellant confirmed that they wished the appeal to be considered and determined based on the Amended Revised Layout, the Revised Landscape Proposals together with the Proposed Location Plan, the proposed house type plans, and the proposed garage and car port plans. Jointly these form part of the "Revised Scheme". The Council contend that the appeal should be considered and determined based on the Original Scheme. In either instance, the planning application, and thus, the appeal is valid as they accord with DMP

Articles 7(c)(i) and 13(1). For ease, I shall from now on refer to these versions of the appeal scheme as the Original Scheme and the Revised Scheme.

11. Nevertheless, the appeal process should not be used to evolve a scheme. The correct comparison for that assessment is between the Original Scheme and the Revised Scheme, and not the plans in between for the reasons set out. Having regard to the Council's summary of the key differences between the Original Scheme and the Revised Scheme², the vehicle tracking information does not in itself amend the proposal. Instead, this evidence it is there to support an assessment of the Revised Scheme. Moreover, the Revised Scheme addresses concerns about the construction of boundary treatment outside the land edged red, and no works are proposed to the ditch outside of the land edged red.
12. But, in relation to the other key differences, there are two tests found in the judgment in *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin) ("Holborn Studios Ltd") to consider.
13. Substantively, the Revised Scheme involves numerous changes to the proposed development's layout. I agree with the Council's summation of the changes that affect Green Lane, Middle Lane and the internal layout of the appeal site, including the proposed planting. The Revised Scheme would also require the removal of a section of existing vegetation to the north of Green Lane opposite South Lodge Farm to achieve a suitable visibility splay in an easterly direction from the proposed eastern access to the development. It is unclear who owns the land on which the vegetation grows as it lies outside the land edged red. It is not for me to determine who owns that land.
14. That said, the changes, which the appellant has made in response to consultee comments, fall within the scope of the description of development even with the proposed changes to Middle Lane as changes were proposed in the Original Scheme to the width and alignment of Green Lane, which, would have had consequential effects on Middle Lane in terms of securing suitable visibility splays for example. However, despite this, and the lack of change to the quantum or type of development proposed, it includes a series of small, incremental changes to the scheme that would when taken together be substantially different to the Original Scheme as they would alter how the proposed development is accessed by all, and whether it can be done safely, the proposal's effect on character and appearance, and how the development would be drained.
15. In procedural terms, the Revised Scheme has not, despite people being informed of the appeal, been subject of public consultation. While some people may have considered the Revised Scheme and made representations as part of the appeal process on this basis, that does not mean that everyone has. There are several changes, and many of these relate to Green Lane or the land alongside it. The proposal's effect on Green Lane and Middle Lane were raised by interested parties during the planning application, and therefore the numerous changes found in the Revised Scheme, which involve substantial differences in respect of highway safety, ecology, character and appearance, would deprive residents involved in the process from considering the revisions and make comments on them.
16. If I were to consider the Revised Scheme that would not accord with either test found in *Holborn Studios Ltd*. Given this, I shall determine the appeal based on the

² Council Statement of Case, Paragraph 4.2

Original Scheme, but I shall have regard to all the supporting information submitted, but only where it is relevant to that scheme or in providing factual information about the site or the surrounding area.

Other

17. Shortly after the hearing closed, the appellant submitted a signed and dated s106 agreement ("s106 agreement"). The main parties agree that the s106 agreement secures the necessary healthcare and public open space contributions. Hence, they consider that the s106 agreement addresses the fifth and sixth reasons for refusing planning permission. I will come to the s106 agreement in due course.
18. The Council confirmed that the first reason for refusing planning permission has been satisfactorily addressed with the submission of the Bat Survey and Assessment and the PEA with the appeal, both dated February 2025. I agree with the Council's conclusion that there is now sufficient information available to show that the proposal would not harm protected species in accordance with Policy ENV 5 of the Scarborough Borough Local Plan ("Local Plan").

Main Issues

19. The main issues in this case are (a) whether the appeal site is in a suitable location, having regard to the development plan's spatial strategy; (b) whether the proposed development would provide safe and suitable access; (c) the effect of the proposed access, public open space, and layout on the character and appearance of the area; (d) whether sufficient information is available to ensure the proposed development delivers BNG; and (e) whether the proposal would secure adequate affordable housing provision, and off-site play and sports facilities, and a health care contribution, having regard to viability.

Reasons

Suitable location

20. Snainton is a Service Village that offers a range of facilities and services. Local Plan Policy HC 1 explains that new opportunities for housing development will be encouraged across the Local Plan area by supporting the development of new housing within settlements where proposals are compatible with other policies in the Local Plan. Most of the appeal site lies within Snainton's Development Limits, but part of the site to the south lies outside of them and in the countryside.
21. It is, however, common ground that the Council is currently unable to demonstrate the minimum five-year supply of deliverable housing sites as required by paragraph 78 of the National Planning Policy Framework ("the Framework"). In this instance, Local Plan Policy HC 1 sets out that, sustainable housing sites that would both make a positive contribution to the five year supply of housing land and be well related to the Development Limits of settlements of at least a Service Village as defined in Local Plan Policy SH 1 will be supported where these proposals comprise sustainable development and are consistent with relevant policies in the Local Plan.
22. I agree with the main party's assessment that the part of the site which lies outside of and next to Snainton's Development Limits would be well related. This part of the proposal would provide the means of access to and from the site and associated landscaped areas, thus broadly continuing the existing layout and relationship that Green Lane and the land to the south of it has with the Development Limits of the village. Furthermore, the proposal's scale would respect

the physical size of Snainton. Hence, this leads me to conclude on this issue that the proposal would accord with Local Plan Policy HC 1 if it comprises sustainable development and is consistent with the relevant policies in the Local Plan.

23. Local Plan Policy HC 2 is referred to by the appellant, and while that policy deals with housing delivery, its objective is to see that come forward on allocated sites or within defined Development Limits of settlements. Given that the appeal site straddles the Development Limits of Snainton, this policy is not applicable.

Safe and suitable access

24. The alignment and point at which Green Lane meets Middle Lane is proposed to be moved southwards with the current hedgerow removed. The existing footway along the eastern side of Station Road/Middle Lane would be extended into the initial part of the appeal site before all road users share Green Lane. However, the proposed junction would not achieve the necessary visibility splay of 2.4 metres by 43 metres, due to the hedge that extends along the front boundary of 57 Station Road. The required visibility splay could only be achieved by using No 57's land, which does not form part of the appeal site. So, even though the visibility splay that could be achieved here would improve the existing junction, that does not justify the inadequacy of the proposed junction arrangement. This is because of the range of road users, the increased use of the junction, and the speed of traffic using Middle Lane. Hence, the appeal scheme would not provide suitable and safe access at the Green Lane/Middle Lane junction.
25. Green Lane, which also functions as a public right of way ("PRoW") would be widened to 4.2 metres between Middle Lane and the eastern access to the proposed development. Thereafter it would remain at its current width. The widened Green Lane would just about enable two cars to pass one another together with pedestrians, bicycles and horse riders, who I understand frequently use Green Lane. This width would not, however, allow a van or refuse vehicle to pass a car at the same time. Nor would it allow two large vehicles to pass each other. In those instances, drivers would need to rely on the bell mouths of the proposed accesses and Middle Lane to wait for the other vehicle to pass. However, that practice may not work for every type of vehicle despite the good forward visibility that the proposed layout would afford. It would also not be acceptable to rely on the grass verges either side of Green Lane to enable road users to pass as they would not be a suitable surface all year round. Overall, the proposed width of Green Lane is insufficient for the variety of road users that would use it to do so safely as the proposed width would lead to road user conflict.
26. Further, the unsuitability of Green Lane and the proposed accesses is borne out of the absence of tracking information demonstrating that large vehicles can manoeuvre in and out of the proposed accesses onto Green Lane. This is important as refuse vehicles travel along Green Lane to service residential properties to the east before joining Barker's Lane. There is no evidence to show that a refuse vehicle could turn left out of the eastern proposed access onto Green Lane to continue with collections after completing those on the appeal site. The proposed arrangement would also contribute to potential conflicts with other road users, particularly if a refuse vehicle would need to carry out several manoeuvres to be able to proceed along Green Lane to the east in forward gear.
27. Pedestrians accessing the development or using Green Lane for other journeys would, after the initial section of footway near to Middle Lane, share Green Lane

with other road users. This is an existing practice and there is no evidence to suggest that it is unsafe or not suitable. However, the proposed development would increase vehicle movements along the lane to/from the two access points. Given this, the lack of a length of footway along Green Lane between Middle Lane and the development, and beyond the proposed eastern access, is not ideal as it would force vulnerable road users onto the carriageway for a considerable length of it. The verge either side of the proposed Green Lane would not provide adequate substitute as it is not part of the highway, and as such, is private land. Section 278 of the Highways Act 1980 (as amended) cannot therefore be used to make the necessary improvements to overcome the unsuitable and unsafe arrangement that is proposed, particularly for people with mobility issues or prams for whom using the verge would not be acceptable.

28. I note the Council's concerns about the health and wellbeing of pedestrians due to the proposed access arrangement but as Green Lane is already used by pedestrians, cyclists and horse riders for wider journeys, I consider a small change to their experience would not be detrimental to their health and wellbeing.
29. The proposed layout would require vehicles to carry out multiple manoeuvres in and out of the proposed parking spaces on plots 3, 7, 10, 11, 12 and 15 due to the proposal's design. As the manoeuvres would take place within the site where there would chiefly be transport movements linked to the dwellings, and the manoeuvres would not take place on Green Lane, it is a design issue rather than a highway safety concern. I will, however, return to this point on the next main issue.
30. Green Lane is relatively narrow to the east of the site and there are little to no passing places. Green Lane links Middle Lane and Station Road with Barker's Lane. Green Lane provides an alternative route for people to use instead of High Street, and it is used by a variety of road users. This would continue in the future and against a baseline of low volume of existing trips even if there are seasonal variations in the number of trips. Most future occupiers would access or depart the proposal using Green Lane and Middle Lane due to the wider carriageways and the proposed improvements to the western portion of Green Lane.
31. The proposal would, however, inevitably increase the use of Green Lane. This is because of the location of facilities and services in Snainton and due to the attractiveness of Green Lane for recreation. Furthermore, there is no reasonable or acceptable measure that could or should be imposed to stop people from using the eastern portion of Green Lane. To do so would affect existing occupiers on this lane and likely cause more issues than it could potentially solve. In any event, I would expect only a proportion of the expected number of trips generated by the development to use the eastern part of Green Lane. Even if this was as high as half of those, that would only create five extra movements per hour. Despite the lack of formal passing places, the relatively good forward visibility and the absence of any existing safety issues mean that I consider that no unacceptable impact on highway safety would be caused by the anticipated increased use of the eastern portion of Green Lane.
32. However, I conclude that the proposed development would not provide safe and suitable access, and it would conflict with Local Plan Policy DEC 1. Substantial harm would stem from this policy conflict given its aim to provide suitable and safe vehicular access and suitable servicing and parking arrangements. The proposal also not accord with Framework section 9 for the same reason.

33. There would be no conflict with Local Plan Policies SH 1 and ENV 7 on this issue as they relate to the settlement hierarchy (not relevant) and landscape character. Furthermore, I shall consider section 12 of the Framework on the next main issue.

Character and appearance of the area

34. Local Plan Policy DEC 1 requires all development to meet several principles of good design. This includes a need for suitable servicing and parking arrangements. The layout and design of plots 3, 7, 10, 11, 12, and 15 would mean that vehicles entering or leaving these parking bays would need to reverse for a fair distance and/or carry out multiple manoeuvres. These would be unsuitable parking arrangements that are a direct result of the proposal's design and layout.
35. The two proposed accesses into the site would, in tandem with the internal access areas, create large areas of hardstanding. Parts of this arrangement are necessary to enable vehicles and other road users to pass one another safely and there would be an inevitable change to the site's existing rural character given the development proposed and the need to create safe and suitable access. The scheme also seeks to deliver a courtyard layout, but the extent and angular design of the hardstanding at the proposed internal junctions and/or corners would create larger than necessary areas of hardstanding. A planning condition to secure suitable materials would help to break up the expanse of hardstanding to differentiate between the various areas, but it would not overcome the harm that would be caused as the proposal would not be an attractive place to live.
36. Soft landscaping is proposed across the layout. The courtyard design does, to an extent, influence the design and amount of soft landscaping that could be incorporated into the appeal scheme. The type of planting could, despite the detailed proposals before me, be changed and a planning condition imposed to secure such details. That could include for example, and accordingly I consider plots 5, 10, 15, and 19 could reflect the local environment as a result. However, the space available to incorporate landscaping, and for that to establish and soften the built form, is limited for plots 3, 4, 8, 9, 13, 14, 20, and 21. I am not satisfied that the proposal would achieve an attractive place to live that reflects the site's local context in respect of these plots, despite the proposed trees.
37. The proposed open space would have a dual function with an attenuation tank and pumping station situated below ground. The principle is satisfactory, but its design and layout does need to be suitable for its function and the experience of users. A small kiosk is expected at ground level on top of a concrete plinth together with a cover, which would be set level with the grass to provide access underground. However, there are, as with the attenuation and pumping station below ground, no precise details of them before me nor are they shown on the proposed layout.
38. The surface of the open space is shown to be grassed and there are trees indicated around the periphery of the open space. The trees would require access to soil and air to help them grow and their lifespan. Protection measures and root cells could be installed to enable the tree roots to grow whilst protecting the apparatus. These measures could potentially be secured by planning condition, but despite the relatively large area, I do not know how large the attenuation tank and pumping station are likely to be, and whether, as a result, the proposed open space is large enough to accommodate the apparatus and the proposed trees given that a standoff may be required. This means that such a condition would not meet the tests of 'necessary' and 'reasonable in all other respects'.

39. The location of the proposed open space would, however, be suitable given that it would be overlooked from several of the proposed dwellings. It would also only be a short distance from future occupiers of the site who would be able to access the area easily. Further, the proposed trees would add to the composition of the open space, and positively add to its character, and that of the wider development proposed. Subject to suitable species they would not discourage the use of the proposed open space. That said, if any or all of the four visitor parking bays were occupied this would screen the space and affect users wishing to play any ball games on the space owing to the risk of causing damage. That would discourage users, affect their amenity, and affect the function and purpose of the space.
40. Green Lane is narrow with areas of grass either side. Its character is considerably different to that of Middle Lane which has an urban character, but one at the edge of a settlement. Green Lane is not urban in character as it lacks typical urban features away from its junction with Middle Lane. Landscaping on either side structures views along the lane and does limit views further afield, but it does afford the lane with a rural character. The lane's use by a variety of road users, and its function as a PRow reinforces this.
41. Widening the lane for a section would, together with an increased use of the lane, change the lane's character and appearance, but they would reflect the site's context as the road would not be overly wide, its alignment largely the same, and it would be a shared surface as there would be no footways other than the initial section adjacent to No 57. As such, I do not consider the proposed changes to Green Lane to be overly urban or detrimental to the character and appearance of the area. The proposal would therefore accord with Local Plan Policy ENV 7 which is concerned with landscape character being protected.
42. I also consider that the proposed layout would result in suitable separation distances and appropriate living conditions for existing and future occupiers. Furthermore, the density of the scheme would respond to local context, and a planning condition could be imposed to secure the use of the suitable materials that the appellant intends to use to reflect the local vernacular.
43. However, my finding in terms of Green Lane is outweighed by the harm that I have identified in respect of the extent of hardstanding, the proposed parking layout, and the function and purpose of the proposed open space. I attach substantial weight to this harm given that the proposal would result in a permanent change to the character and appearance of the area. The proposal would conflict with Local Plan Policies DEC 1 and DEC 4 together with the Residential Design Guide Supplementary Planning Document ("SPD") and section 12 of the Framework. These jointly seek, among other things, to create attractive and desirable places to live, and the detailed design to positively relate to the local context and provide suitable servicing and parking arrangements. Further, open spaces should have a clear function, be connected to other spaces, be visible/overlooked and be accessible for all to encourage their use and provide a good standard of amenity.

Sufficient information about BNG

44. Local Plan Policy ENV 5 states that proposals should respond positively and seek opportunities for the enhancement of species, habitats or other assets thereby resulting in a net gain in biodiversity. This reflects Framework paragraph 187 d). The net gain to be delivered is 10% which is the mandatory amount under Schedule 7A of the Act (as inserted by Schedule 14 of the Environment Act 2021).

45. It is common ground that information submitted with the Original Scheme (Biodiversity Gain Plan (Temple T9667) and Carr House Snainton BNG Statistical Metric 1.2, PEA Map - UK Hab Baseline Habitats (Version 2.2)), was inaccurate and the full site had not been assessed in the BNG metric and assessment. Also, the initial information stated that the BNG would be delivered on and off site on land within the appellant's ownership.
46. A Biodiversity Net Gain Assessment ("BNG Assessment") and a BNG Metric were prepared in September 2024 to establish the baseline habitat conditions of the appeal site, and to describe the post development habitats to ensure the scheme delivers a minimum 10% BNG, and to discuss off-site proposals where sufficient BNG cannot be delivered within the appeal site. The BNG Assessment was updated in February 2025 to reflect a revision to the appeal scheme that I am not considering for the reasons previously set out. Nevertheless, the BNG Assessment and its update both set out the site's existing baseline condition. They also reflect the Snainton FINAL BNG Metric 040924 that was provided with the appeal. Hence, they are relevant to informing the site's baseline conditions.
47. However, the Council consider the site's ecological baseline (area-based habitat) is incorrect insofar as the Wych Elm tree ("T4"). This tree is subject of a Tree Preservation Order and is recognised as 'notable' on the Woodland Trust 'Ancient Tree Inventory' due to its estimated girth of around three metres. The Council consider the tree to be a veteran tree.
48. The Arboricultural Impact Assessment ("AIA") identifies T4 as having a height of 20 m with a large crown at 4 m high, spread in each direction, albeit slightly shorter to the east and west compared to the north and south, with minor deadwood in the crown. While water logged ground around the tree was noted, T4 was categorised as a 'U' specimen due to the decay at the base of the tree's stem and into buttress roots. The AIA puts the tree's life expectancy at less than ten years, and it is deemed no longer to be safely retainable. It is therefore proposed to be removed.
49. The Framework defines an ancient or veteran tree as a tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. The Planning Practice Guidance explains that veteran trees will have significant decay features, such as branch death and hollowing as they contribute to a veteran tree's exceptional biodiversity, cultural and heritage value.
50. The parties outlined their respective positions on the criteria found in Table 2 of the Schedule found in The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 ("the Regulations") and the key characteristics of Document 2. In terms of the Regulations, it is common ground that T4 has significant decay features such as hollowing, a girth at around 4 m which is large for this species, and it is likely to have a high value for specialist nature species. The Council suggest that could include the White Letter Hairstreak Butterfly, who's decline has gone hand-in-hand with the decline of this tree species, as the caterpillars rely on elm leaves, rare epiphytic mosses and lichens. Thus, I agree with both parties that the criteria in the Regulations are met by T4. I also agree with them about the key characteristics in Document 2, that T4 has a large girth for the species, and it has a hollowing trunk which is a sign of die back.
51. I also consider that T4 has furrowed bark that reflects its age compared to the tree's initial smooth bark. The tree's girth also indicates that T4 is of a certain age and maturity, though there is decay at its base and into buttress roots. But it has

not succumbed to Dutch elm disease, and the crown appeared to be in good condition and is presently unaffected by the decay at the base of T4. There is also a lack of adverse human impacts. When all these factors are taken together, I consider, on balance, that T4 is a veteran tree. Circumstances do not appear to have changed since the date of the planning application.

52. Consequently, T4 is irreplaceable habitat which is technically very difficult to restore, recreate or replace once destroyed. Framework paragraph 193 c) explains that development resulting in the loss or deterioration of irreplaceable habitats (such as veteran trees) should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists. Footnote 70 provides an example of 'wholly exceptional reasons'. I shall return to this later.
53. But, from a BNG perspective, the baseline area habitat conditions for the site are not accurate. The metric should not be applied to any irreplaceable habitat as defined by the Regulations. The appellant indicated that, if T4 was removed from the metric, this would increase the post-development area-based habitat BNG value of the scheme from 10.94% to around 20.9%. That is not, however, shown in a document. This is critical to ensure that the site's baseline conditions are established to determine whether the BNG objective would be met. This is not the case for area-based habitat despite there being no issue with hedgerow or watercourse habitats.
54. Nevertheless, leaving that to one side, bespoke compensation measures should be proposed and agreed in respect of T4. There is no set formula to work out what may be suitable compensation, but there is no detailed proposal before me.
55. The Council said 20 to 30 trees may be needed to agree a bespoke compensation measure. I have no reason to doubt this analysis. But it led the appellant to make oral submissions about the number of trees that would be required to achieve the 10% BNG and how many would be leftover for a bespoke compensation measure.
56. The landscape proposals in the Original Scheme show 25 trees (plan Ref: 4033/1 Revision B). A good proportion of these would be required to deliver a 10% BNG, and those would need to be sited in areas subject to a management company so that they deliver the necessary BNG. This means that there would not be enough trees left to compensate for the loss of T4 if the Council is correct about the number of trees needed. Numerically, this is borne out by the appellant's analysis of the Detailed Landscape Proposals (plan Ref: 4033/1 Revision C) which showed 33 trees on site, with 13 of these required to achieve a 11.81% BNG. While I am not considering that scheme, in that eventuality, 20 trees would be left for a bespoke compensation scheme for T4. The Original Scheme would not leave enough trees available for any compensation scheme.
57. The proposed layout (Original Scheme) would, in my view, struggle to accommodate more trees within the main body of the development while ensuring that they would be under the control of the management company and not in people's gardens. That would leave the grass verges either side of Green Lane as providing potential for additional tree planting to form part of any compensation scheme. Yet, Yorkshire Water have assets extending broadly east to west on the north and south sides of Green Lane beneath the grass verges. Yorkshire Water require a five-metre easement either side of any site surveyed infrastructure to be kept clear. Based on Yorkshire Water's map, that would heavily limit where

additional tree planting could go along the Green Lane corridor³. Those assets could be diverted which may enable tree planting to take place whilst maintaining any easement, but I am unclear where the assets may be moved to, and thus, where, and how much potential tree planting could form part of a bespoke compensation scheme. In short, there are too many variables and unknowns.

58. For the reasons explained, the site's area-based habitat baseline conditions have not been properly established given that T4 is irreplaceable habitat. This means the BNG Assessment and its update and the BNG Metric are not accurate, and the baseline to assess whether the BNG objective would be met is not before me. Hence, I conclude that the proposal does not accord with DMP Section 7(1A). Although the appellant indicated that the proposal would deliver a greater area-based habitat BNG with T4 removed from the metric, a statutory biodiversity metric calculation is not before me to demonstrate this. Thus, the figures provided are anecdotal and I cannot be certain that they are accurate as the figures behind the headline figure have not been provided. Hence, I conclude that the proposal does not accord with Paragraphs 2, 4, and 5 Schedule 7A, Part 1 of the Act.
59. Moreover, there is no detailed bespoke compensation scheme before me, and in any event, I am not certain that the appeal scheme could accommodate the number of trees that the Council reasonably suggest would be required to compensate for T4's loss, whether that be based on the detailed landscape proposals or what is potentially achievable with extra tree planting.
60. Despite this, the appellant contends that BNG could be secured through a condition. The Act imposes a Biodiversity Gain Plan on every planning permission granted⁴. However, this does not obviate the need to establish an accurate baseline for the site and provide a statutory biodiversity metric calculation to support that. Without this, it is not possible to consider whether the 10% BNG objective could be met. Accordingly, I conclude that sufficient information is not available to ensure the proposed development delivers BNG. This brings the proposal into conflict with Local Plan Policy ENV 5 and Framework paragraph 187 which seek net gains for biodiversity.

Affordable housing provision, off-site play and sport facilities and healthcare

Affordable housing

61. Local Plan Policy HC 3 sets out the Council's expectation that affordable housing will be provided in all types of residential development. Given the site's location, 30% of the proposed dwellings should be affordable homes in accordance with the policy. But, if it is demonstrated through an independent viability assessment that 30% of the units on the site would make the scheme unviable, a reduced level of on-site provision or a financial contribution for off-site provision may be acceptable.
62. In this case the appellant submitted a Financial Viability Assessment ("FVA") with the planning application and a RFVA with the appeal to account for the passage of time, changes in the market, changes with build costs, further work and design that has changed the abnormal costs, and changes after the Council's comments on the FVA. The Council has carried out a review of the appellant's assessments and prepared an addendum following the exchange of abnormal / site specific infrastructure costs. In doing so, the Council sought expert advice from a costs

³ Appendix 15, Council Statement of Case

⁴ Paragraphs 13 and 14, Schedule 7A, Part 2, the Act

consultant. This led the parties to set out their areas of agreement and disagreement in the Viability Statement of Common Ground (“VSoCG”).

63. Before I explore the dispute, I have no reason to disagree with the party’s agreed inputs into the scheme’s viability appraisal as set out in section 2 of the VSoCG. It is also relevant to explain that the off-site play and sports facilities and the healthcare contributions are not affected by either parties viability cases.

Miscellaneous addition to Gross Development Value (“GDV”)

64. The Council assert that the appellant’s GDV does not take account of certain plots having garages. The difference between the parties is £110,000 which is the total sum to build the eight garages proposed across the scheme (£10,000 for a single and £20,000 for a double). The appellant disagrees and judges that the revenues applied to the accommodation have regard to proposal’s specification and the garage accommodation based on available market evidence.
65. There is a limited amount of new build evidence in the area to compare the scheme against, especially when most other schemes are conventional/national housebuilders, and the appellant expects that they would deliver to a higher standard which would yield a premium above what a conventional/national housebuilder would achieve. That is a reasonable approach.
66. Therefore, comparisons rely on the second-hand market and the varied quality of homes in that market when judged against a new build home. This makes the judgement difficult. The Council, however, pointed to two properties to support their point. The three-bedroom detached dwelling at 54 High Street in Snainton sold at £292 per ft², whereas plot 19 which is a four-bedroom detached property with a single garage is estimated to sell at £300 per ft². South Lodge Farm is larger than new build detached properties, but it sold for £354 per ft² in August 2022. Whereas plot 15, a four-bedroom detached dwelling with a double garage is envisaged to sell for around £292 per ft².
67. The proposed dwelling on plot 15 would be larger than South Lodge Farm with both properties having a detached double garage. Given this, the revenue associated with plot 15 is significantly lower than the price achieved at South Lodge Farm. While I recognise that this was during a strong housing market, the appellant expects, due to local demographics, that there will be strong demand for houses on the appeal site. I have no reason to disagree here. The detached dwelling at 16 Main Street in Ebberston, a neighbouring village, also achieved £359 per ft² for a dwelling not dissimilar in size to plot 17 which is only envisaged to achieve £298.56 per ft². That is considerably below 16 Main Street, albeit I do not know if that property included a single garage like plot 17.
68. Given the local second-hand market evidence, local demographics and the expected strong demand for the product, I consider the proposed revenues with plots with garages are a little low. It is hard to put a precise figure on it, but the only alternative figure that I have is the £110,000 that the Council say should be added to the appellant’s GDV figure based on the plots with single and double garages.

Abnormal costs

69. The abnormal costs have progressively increased as the appeal scheme has evolved through either its revisions and/or the passage of time. I have no reason to disagree with the party’s agreement about the cost of the solar panels (£15

difference) and the removal of the cost for the foul water pump.

70. The appellant's latest cost estimate for works to Green Lane is £302,650 but that is based on a revised highway proposal that I am not considering. Therefore, this figure should be discounted. Instead, the FVA set out that works to Green Lane would amount to £197,100. That figure related to the Original Scheme. That figure was then revised up to £202,375 for revision D. That said, the higher figure was quantity checked, and the rates were considered reasonable for the works by the Council's costs consultant. Given the passage of time since the FVA and changes to build costs, I consider a figure of £202,375 to be broadly reasonable.
71. The appellant's piling costs are based on a quote of £343,657 that was received from a piling company. There is no breakdown of how this figure has been arrived at to support it, but this cost has risen from previous figures provided in the FVA at £176,750 and the RFVA at £299,750. However, the Phase II Geo-Environmental Investigation Report ("GI Report") sets out a recommendation that rafted or piled foundations are used for the proposed development. The Council's costs consultant provided a detailed breakdown for the use of raft foundations which amounts to £237,733.27. Although that is based on the Amended Layout the number, extent, or position of the proposed dwellings have not changed. Given this, the recommendations of the GI Report that raft foundations would be suitable, and the absence of the appellant's piling costs breakdown, I prefer the Council's assessment of foundation costs.
72. The cost of surface water attenuation has remained consistent at around £152,250 throughout the appellant's viability evidence. There is no detailed breakdown of how this figure has been arrived at, but the Council has reviewed the cost of surface water attenuation based on the proposal. This has yielded an amount of £91,852.34. This is to be preferred given the detailed breakdown of how it has been arrived at.
73. The FVA and RFVA both included the same cost for a surface water pump at £38,375 yet the latest cost estimate is now £50,439. I am unclear how these figures have been arrived at, and why the cost has increased in a relatively short period of time between the RFVA in February 2025 and 4 June 2025 when the appellant provided their latest cost estimate. The Council's costs consultant considered the lower figure to be reasonable, and while there is no further explanation behind that, I consider the lower figure to be reasonable without any detail to support the use of the higher figure. I therefore consider that the Council's assessment of the scheme's abnormal costs is more reasonable and ought to be used to assess the proposal's viability.

Profit

74. Given that it is agreed that an 8% return on affordable homes is reasonable, I shall focus on the level of profit associated with the market homes that is the subject of the party's disagreement.
75. The PPG states that "for the purpose of plan making an assumption of 15-20% of GDV may be considered a suitable return to developers in order to establish the viability of plan policies." Both parties agreed that is relevant guidance also for decision making purposes. Bearing this in mind, the appellant's expected profit of 20.31% for market homes is slightly above the upper point of the PPG's range.

76. The common industry practice for residential development is to benchmark profit as a % of Gross Development Value ("GDV"). Considering the return on affordable homes, the appellant considers a 20.31% profit on the GDV of market homes to be reasonable. This, together with the 8% return on affordable homes generates a 19.21% margin. The Council contends that a 18.13% profit on GDV for market and First Homes, and 8% for affordable rented homes to be suitable. This gives an overall 'blended' rate of 17.5%.
77. Each site is different, and market conditions vary, so applying a universal level of developer profit of 20% is not necessarily correct, though it is a starting point. It is also important to bear in mind that determining a suitable developer profit level considers a typical developer rather than the situation of a specific developer.
78. The appellant says that a developer profit below 20% may impact development funding being secured whichever route is chosen, but there is no substantive evidence to support this so I cannot be certain that this is or would be the case here. A residential developer would likely bring this site forward. Save for any affordable units, the dwellings are not a specific form of housing that could, for example, take longer to dispose of. A developer would be familiar with the nature of the development proposed and the work involved. Although there are abnormal costs to consider, my findings point to these being lower than the appellant's assessment. These factors would reduce the risk level and due to the lack of substantive evidence around developer funding, I consider that a reasonable return and incentive would still arise with a profit level suggested by the Council. This is the profit level that should be used to assess the proposal's viability.

Professional fees

79. Owing to the conversion aspect of the proposal the appellant considers 8% of their plot construction costs, externals work, and garage costs is a suitable allowance. This is because those elements tend to require more input from professionals and reports. Further, the scheme comes with challenges, and this should be reflected in this input.
80. The Council suggest a lower figure of 6.5% based on an average of the professional fees adopted by applicants in various similar sized schemes chiefly across the north of England. Numerically, these schemes are comparable in terms of the number of dwellings, but I do not know if any involved a conversion element. Therefore, to my mind, 8% lies in the middle of the range for professional fees of 6-10% of standard build costs, and given the conversion element, I consider 8% to be reasonable in this case.

Finance costs

81. Arrangement and exit fees influence the appellant's stance of 9.5% for the proposal's finance costs. Homes England, who are a regular source of funding for small and medium-sized enterprises ("SME") typically have arrangement and exit fees between 4-8% above the base rate, which now stands at 4%, albeit it is hoped to steadily reduce in the coming months/year. Therefore, the difference between the base rate and 9.5% influences the risk for the developer.
82. The Council adopt a lower figure of 8% which they say is broadly reasonable and consistent with other similar scale schemes. There is no evidence to support this, and the difference between the two parties is one of professional opinion. I prefer the appellant's figure to be more reasonable here due to reflect the current market.

Marketing / disposal

83. The parties dispute here lies in 0.5% which equates to £1,962. That is neither here nor there insofar as determining whether the scheme could viably support any affordable housing. I have adopted the appellant's figure given the site's location compared to where most estate agents may be.

Future Homes Standard

84. The Future Homes Standard is a set of rules that are aimed to ensure new homes produce less carbon emissions. It is unclear when further details will become available, including guidance, and when the Future Homes Standard will be implemented. The appellant explained that the market is factoring the Future Homes Standard in as an extra cost, so it should be accounted for as part of the assessing the appeal scheme's viability.
85. I do, however, recognise the Council's point that the proposed development could, if allowed, be built out before the standard comes in, and it is difficult to know exactly what may happen and when, and what, if any, the knock-on effects may be on market values. These are all valid points and there is no justification to support the inclusion of £5,000 per plot (total £105,000) at the current time given the uncertainty of what the Future Homes Standard may comprise of, when it will be implemented and whether there may be any transitional arrangements. That is not to say that circumstances may not change in the future, but for now this input should be discounted.

Benchmark Land Value ("BLV")

86. BLV should be based on existing use value, allow for a premium to landowners and reflect the implications of abnormal costs; site specific infrastructure costs; and professional site fees.
87. The main parties agree that the existing use value for the farmhouse should be £670,000 and the land paddock value to be £50,000. They also agree that a nil premium uplift should be applied to the farmhouse. The disagreement therefore relates to the amount of premium uplift applied to the paddock land. The appellant considers a multiplier of 20 times the existing use value to be suitable, whereas the Council contends that a multiplier of 13.5 is appropriate.
88. The PPG explains that "the premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. The premium should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to fully comply with policy requirements."
89. Determining the correct multiplier is not an exact science and there are professional opinions before me. There are also various schemes from the local area and further afield which have been based on a range of multipliers. The appellant has also factored in the site's planning history, but the refused planning applications are not reason to affect the multiplier as they were refused for design led reasons rather than the principle of development.
90. I discount the comparison at Cayton Low Road as the multiplier is an outlier compared to appeal decisions at Warburton Lane in Trafford, Halton Heights in Lancaster, and a decision in Poulton-le-Fylde which have applied multipliers of between 10 and 25. I do not know what the abnormal costs per gross acre were in

the Poulton-le-Fylde case, but Warburton Lane was around £350,000 per gross acre and Halton Heights was around £100,000 per gross acre. The Council's assessment of abnormal costs is roughly £176,228 per gross acre.

91. Closer to the appeal site, the scheme at Norton Lodge, Norton saw a premium uplift of 15 times the existing use value applied in the context of abnormal costs of around £180,000 per gross acre. This is a similar abnormal cost per gross acre to the appeal scheme as per my findings.
92. Given my findings about abnormal costs, it is reasonable that there should be some reduction to BLV as a result. This means that I consider the appellant's multiplier of 20 to be too high compared to other appeal decisions and the Norton Lodge scheme which is closer to the appeal site than those schemes. The alternative position is that of the Council's which is a multiplier of 13.5. I consider that this would be a reasonable incentive for the paddock's landowner to sell their land for the development, though I caveat that by saying that the multiplier could potentially be slightly higher, but not as high as the appellant's figure.
93. A multiplier of 20 to 30 is suggested for greenfield sites in the North Tyneside Community Infrastructure Levy Charging Schedule but that document relates to a different geographic location on the edge of a major city. I do not consider it to be comparable to a site within a rural village with a countryside setting.

Conclusion on the scheme's viability

94. For the reasons set out, I prefer the Council's assessment insofar as the miscellaneous addition to GDV, the level of developer profit, abnormal costs, the Future Homes Standard, and BLV. I have agreed with the appellant's assessment in terms of professional fees, finance costs, and marketing / disposal, which leads me to a position whereby there is not a viability assessment before me that wholly reflects my findings. However, it is likely to be closer to the Council's assessment than the appellants which may mean that the appeal scheme could potentially support an element of affordable housing provision, though I am unable to say exactly how much the scheme could possibly afford.
95. But whatever the figure is, it will not be the full 30% provision sought by Local Plan Policy HC 3. Nevertheless, subject to viability, a reduced level of on-site provision or a financial contribution may be acceptable under the terms of this policy. In this eventuality, viability can be re-assessed in line with Local Plan Policy HC 3 to achieve the maximum number of affordable homes possible. The s106 agreement requires that a revised viability assessment is undertaken before the development commences, and if there is any dispute between the parties, that dispute is independently arbitrated before any development starts.
96. While there are no guarantees of what the affordable housing contribution may be, assessing the scheme's viability just prior to the development commencing would secure the maximum number of affordable homes possible. This is in the public interest to help address the national acute need for this type of housing. The s106 agreement caps the maximum provision at four on-site affordable homes for rent and one first home which I consider to be reasonable based on my findings. Hence, I conclude that the proposal would accord with Local Plan Policy HC 3.

Off-site play and sports facilities and healthcare

97. The s106 agreement secures a healthcare contribution that would either be used to reconfigure or expand the nearby medical practice or as part of a new build

health development that would provide health services to future occupiers of the development as well as the nearby area⁵. The s106 agreement also secures a contribution that would be spent on outdoor sports facilities and equipped play areas within the parish of Snainton. The contribution is based on the Green Space Supplementary Planning Document ("GSSPD") in terms of the standard, typology and on or off-site provision. Both contributions would be secured irrespective of the viability dispute concerning affordable housing provision, and they would both satisfy the tests in CIL Regulation 122, and Framework paragraph 58, namely that they are all necessary to make the development acceptable, directly related, and fairly and reasonably related in scale and kind. As such, these obligations are material considerations in this appeal, and the proposal would accord with Local Plan Policies HC 10, HC 14, INF 5, and the GSSPD.

Other Matters

Housing land supply

98. The Local Plan is now more than five years old, and it has not been reviewed. Consequently, the Standard Method is the basis to calculate the housing requirement. The parties agree that the five-year requirement is 4,262 dwellings. The Council says that it can demonstrate a supply of 2,786 dwellings (3.3 year supply) whereas the appellant says that a supply of 2,318 dwellings (2.67 years supply) can be demonstrated. The disagreement relates to two sites.
99. The Middle Deepdale site has detailed planning permission 107 dwellings, so they should be treated as being deliverable. Detailed permission(s) is required for other residential development on this site. That is expected next year particularly after a bridge, that is required to be built next year, is delivered. The Council parts own the site and if there is delay in delivering the bridge there is a legal obligation to enable the Council to deliver it instead. The bridge requires detailed planning permission and pre-application discussions are taking place. In 2025/26 58 dwellings were expected to be delivered on this site, with 90 dwellings per year thereafter until the end of the five-year period. It is extremely unlikely that dwellings will be delivered on this site in 2025/26, and there would be knock on effects for the number of dwellings delivered thereafter in the five-year period. Although a number of dwellings may be delivered on this site in the five-year period, neither party could give me a clear indication of how many that may be.
100. Outline planning permission has been granted for 220 dwellings at the land off Mill Way. A reserved matters application is currently with the Council for determination and revised plans are expected shortly to address layout concerns. A decision is expected this calendar year and there will be no pre-commencement conditions to discharge. The developer is keen to progress this site, and I consider dwellings from this site are likely to be delivered in the next five years. However, the initial 30 dwellings to be delivered in 2025/26 is overly optimistic given that the reserved matters are yet to be approved. I would anticipate that this would have knock on effects for the number of homes delivered in subsequent years. With that in mind, I consider 180 dwellings are deliverable from this site if the site's delivery starts in 2026/27 which seems likely.
101. The current extent of the Council's housing land supply lies somewhere between the two parties' positions but for the reasons explained it is difficult to pinpoint what that figure may be for the two sites in question. It is likely to be in the region of

⁵ Document 3

3 years' worth of deliverable housing sites, though I shall adopt the appellant's figure in my planning balance given that represents the worst-case scenario.

Planning Balance

102. The proposed development would conflict with Local Plan Policies DEC 1, DEC 4, ENV 5. Balanced against this is the proposal's compliance with Local Plan Policy HC 3 and ENV 7. These, along with Policy HC 1, are the most important policies in this case. Although the proposal would also accord with Local Plan Policies HC 10, HC 14, and INF 5, I consider that the proposal would conflict with Local Plan Policy HC 1 due to the proposal's conflict with other relevant policies in the Local Plan and for reasons that I come onto. Hence, the proposal would not accord with the development plan as a whole, and this is a matter that counts substantially against allowing the appeal.
103. However, the Council can at present demonstrate a 2.67 year supply of deliverable housing sites. That is a shortfall of 1,944 against the five-year housing requirement. As a result, the development plan policies that are most important for determining the appeal are out-of-date, having regard to footnote 8, and so paragraph 11 d) of the Framework is engaged, and there are no policies in the Framework that protect areas or assets of particular importance that would provide a strong reason for refusing the proposal.
104. The provision of housing, with a scheme that includes a range of house types, including bungalows, would ensure that the proposal contributes to the supply of housing in North Yorkshire. That contribution would be limited given the scheme's scale and the shortfall, but the scheme would chime with Framework paragraph 73 which explains that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for SME housebuilders to deliver new homes, and are often built out relatively quickly. The proposal would also make an effective use of land. Therefore, the proposal would accord with the Framework's objectives set out in paragraphs 61, 73, and 129. However, even though the site would not be isolated, delivering housing in the village in a suitable location for people to access facilities and services is an expectation of Framework paragraph 110.
105. Furthermore, the affordable housing contribution that the scheme can afford would help towards the provision of this type of housing in the area. It is unclear what level of contribution would arise, but it would be a benefit, nonetheless. That said, drawing housing matters together, and bearing in mind Framework paragraph 66, I attach moderate positive weight in favour of the proposal. However, this is on balance considering the relatively modest affordable housing contribution that the scheme is likely to make, albeit it would be the contribution that it could afford.
106. The economic spending relating to the construction of the houses and future occupiers spending in the local economy would accord with the Framework, as would the construction jobs and economic benefit in the construction industry and the supply chain that would flow from the proposal. Future occupier spending in the local economy would also contribute. Given the scale of the scheme, I give the economic benefits moderate positive weight. Monies arising from Council Tax receipts and the New Homes Bonus attract neutral weight as they either mitigate the proposal's effect or I am unclear how it may be spent.
107. The off-site play and sports facilities and healthcare contributions would mitigate the proposed development's effect and thus carry neutral weight.

108. However, for the reasons set out, the proposal would not be well designed for multiple reasons. As such, it would not function well and add to the overall quality of the area; be visually attractive in terms of its layout and through effective landscaping; sympathetic to local character; not establish a strong sense of place; optimise the site's potential to accommodate and sustain an appropriate amount and mix of development; or create a safe, inclusive and accessible development in accordance with Framework paragraph 135. Hence, as per Framework paragraph 139 development that is not well designed should be refused. I attach substantial negative weight to this.
109. Framework paragraph 193 a) and c) explain that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or compensated for, then planning permission should be refused. In this case, the proposal would result in the loss of irreplaceable habitat, and there is no suitable compensation strategy. Having regard to the public benefits associated with the provision of housing, and the economy, I do not consider they would clearly outweigh the loss of that habitat. Hence, there are wholly exceptional reasons in this case. Accordingly, Framework paragraph 193 c) says planning permission should be refused. I attach very substantial negative weight to this.
110. I find that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having particular regard to the listed key policies. As such, it would not be sustainable development.

Conclusion

111. I conclude that the proposal would conflict with the development plan and the material considerations, including the Framework do not indicate that the appeal should be decided other than in accordance with it.
112. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Lane MRTPI	Director, DPP Planning
Josh Kitson	Director, Walker Morris LLP
Ian Godfrey	Technical Director, Mulgrave Property Group Limited
Steven Windass BSc (Hons), MSc (Eng), CEng, FIHE, MCIHT	Technical Director, Local Transport Projects
Philip Roebuck FRICS	Partner, Cushman and Wakefield
Ben Pickering MA Hons	Director, Rosetta Landscape Design
Scott Reid BSc (Hons), FdSc (arb), Dip Arb L4, ND Arb, TechArborA	Tree Survey Solutions
Rob Frith B.Sc. (Hons), MRSB	Principal Ecologist, RDF Ecology
William Marshall	Principal Planner, DPP Planning

FOR THE LOCAL PLANNING AUTHORITY:

Elana Kaymer	Counsel instructed by the Solicitor of North Yorkshire Council
Victoria Bell	Senior Planning Officer, North Yorkshire Council
David Walker	Development Service Manager, North Yorkshire Council
Eve Williams	Trainee Solicitor, North Yorkshire Council
Niamh Iveson	Principal Engineer, North Yorkshire Council
Kay Hitchinson	Senior Project Engineer, North Yorkshire Council
Dan McAndrew	Principal Ecologist, North Yorkshire Council
Helen Percival	Ecologist, North Yorkshire Council
David Newham MRICS	Director, CP Viability Ltd

INTERESTED PARTIES:

Cheryl Farrow
Jennifer Speight

DOCUMENTS

- 1 Map of publicly maintainable highway
- 2 Woodland Trust Ancient Tree Guide 4: what are ancient, veteran and other trees of special interest
- 3 Map of parish boundaries in the area
- 4 Written application for an award of Costs, North Yorkshire Council
- 5 Written response to North Yorkshire Council's application, by the appellant
- 6 Interim guidance on transport issues, including parking standards, and advice on transport assessments and travel plans

Richborough



Costs Decision

Hearing held on 25 and 26 June 2025

Site visit made on 26 June 2025

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Costs application in relation to Appeal Ref: APP/U2750/W/25/3361677

Land off Carr House, Snainton, Scarborough YO13 9BL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by North Yorkshire Council for a full award of costs against Mulgrave Developments Ltd.
 - The appeal was against the refusal of planning permission for the demolition of an agricultural barn and the erection of 19 dwellings together with the extension and conversion of the existing dwelling to form two houses, with associated access from and works to Green Lane, drainage and landscaping.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for North Yorkshire Council (“the applicant”)

2. The costs application was made in writing at the hearing. The following additional points were made orally.
3. In relation to the hearing, it is now more evident to the applicant, and we would like to highlight the time spent on the first day, as you will be aware there were a number of hours spent discussing which plans were being relied on and the various iterations of those plans and which revision of the plans they actually related to. The applicant has had to prepare for the hearing without clarity as to which plans were being put forward until the appellant clarified this in their email upon your request a matter of days prior to the hearing. So, the fact that the applicant has had to prepare its evidence based on so many variations has clearly been particularly costly, especially given that the appellant seemed to not actually be putting forward the original scheme in terms of the evidence presented in its Statement of Case, which focused on the revisions instead. There were then, even after they were clarified, various matters in terms of the specific details that only came to light during the appeal, such as the moving of Green Lane northwards and the red line boundary issue. The applicant had spent a lot of time on that matter prior to the hearing trying to compare plans and make sense of what was in front of it. This needed to take place in the first instance before the various officers could comment on the proposal. So essentially, in addition to the written application, the way the appellant has behaved throughout the appeal hearing has further compounded the need for the applicant to waste costs and time in making sense of the various schemes and then responding to them.
4. Picking up on the first point in reply, essentially, whilst there was time spent on clarifications, those were entirely necessary given, as I have already discussed, the number of plans and the inconsistencies between them, which the applicant did have to spend extra time in working out.

5. In terms of the points about the description of development, just as a point of clarity, you will have your own notes, I am sure, but the applicant's recollection is that it was not withdrawn; rather, there was an acceptance Green Lane was mentioned, but the applicant maintains that the type and breadth of works were not covered by the description of development (revised scheme).
6. Then just a number of other points of clarity as well. The applicant is looking at the first point raised in the written response; it is simply not the case that the applicant thinks that no further work could be done. It is, as they made clear, the amount of further work that would require a new application.
7. In terms of point 2.2 of the written reply, we are not suggesting that awards can be made for the time spent on the application process, and I have set out the nuance in the application at paragraph 4, but to clarify the relevance of what has happened post 17 July 2024, it is that the applicant ultimately had the discretion to accept any further information. They did not and had made their position clear as to why, and therefore when it came to the appeal and the revised scheme and the previous revised plans that were also in play, the applicant had to spend time analysing those for the appeal.
8. In terms of what the applicant has and has not withdrawn in terms of paragraph 2.10 of the written reply, it is again not something that we did in fact withdraw. Just to underline the point, the Planning Practice Guidance ("PPG") places the discretion of accepting further evidence after the validation of a planning application entirely with the applicant. Whilst the appellant maintains at paragraph 2.16 of its written reply that those were minor tweaks because the applicant had not accepted the revised plans. If this is meant to refer to the tweaks between revisions A and B as compared to revisions D and D.a, then it is not an appropriate comparison given what had been accepted.

The response by Mulgrave Developments Ltd ("the appellant")

9. The response was made in writing at the hearing, and the following additional points were made orally.
10. The first point I'd like to respond to is the time spent on the first morning of the hearing. We would like to highlight that a significant portion of that time was spent dealing with the applicant's misunderstanding of the proposed works near South Lodge Farm. There was also material time spent addressing the applicant's argument that the appeal site fell outside of the description of development, only for the applicant to withdraw from both of these positions on questioning. There was also a suggestion that the works to move Green Lane to the north also led to wasted time. It was established that the movement of Green Lane northwards was limited to around 16 cm and that these works had been shown in that fashion for a number of months, so there was no prejudice to the applicant.

Reasons

11. Parties in planning appeals normally meet their own expenses. However, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
12. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs

should be awarded. I have been mindful of actions during the planning application in considering this application.

13. The applicant seeks an award of costs on procedural matters in respect of the plans and supporting information and the abnormal costs insofar as the viability case. There are several strands to this that broadly relate to three examples of unreasonable behaviour as set out in the PPG. They are introducing fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen; delay in providing information or other failure to adhere to deadlines; and only supplying relevant information at appeal when it was requested, but not provided, at application stage.

Plans and supporting information

14. My decision sets out the chronology in which the plans and supporting information were submitted or presented by the appellant. I do not repeat this for the sake of brevity, but I shall adopt the same abbreviations for ease. I have also outlined which plans the appellant wished the appeal to be determined upon, my views on them, and the plans on which I determined the appeal. Again, that is not repeated here and I shall instead focus on whether the appellant's actions amount to unreasonable behaviour and whether those actions caused the applicant to incur unnecessary or wasted expense in the appeal process.
15. The starting point is the applicant's email of 17 July 2024, which set out that it had a *"number of concerns that we do not consider can be rectified by minor amendments. The required alterations to achieve an acceptable scheme would take it outside of the scope of the current application, as such we will not be accepting any amendments to the current application."* The intended reasons for refusal were then set out. These related to a purported unsafe access, harm to visual amenity and the character of the area, overdevelopment, and insufficient information in respect of highway matters, protected species, biodiversity net gain, and viability. The email then set out the applicant's view that *"it is not considered that an acceptable scheme can be achieved within the perimeters of the current application. We request that the application is withdrawn....in the meantime we will progress the application to determination."*
16. The appellant is correct to say that the applicant's concerns relate to the detail of a scheme rather than the principle of development taking place on the land. It is also possible for changes to an application to be suggested or requested before the local planning authority has determined the application. Prior to and after the email of 17 July 2024, the appellant was seeking to engage with the applicant to address its concerns. Multiple requests for meetings were made by the appellant, but they were not taken up. Why that was the case, save for the response on 17 July 2024, is a matter for the applicant, but local planning authorities should approach decisions on proposed development in a positive and creative way.
17. There is, however, a duty placed on local planning authorities to make timely decisions. That is essential for a properly functioning planning system. With this in mind, the PPG explains that it is at the local planning authority's discretion whether to accept such changes, to determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted. Noting this, for the reasons outlined, I disagreed with the applicant's contention that the type and breadth of works detailed in the Revised Scheme to Green Lane would fall outside of the

- description of development. That said, the amount of further work involved in potentially supporting an acceptable scheme was varied and significant compared to the Original Scheme. They also cover a range of issues that have knock-on effects to one another. The applicant was entitled to consider that they jointly materially altered the proposal despite the appellant's view that they were minor changes. They explained why they did. The number of revisions made and the breadth of additional supporting information that is now relied upon support this.
18. Nevertheless, even if the applicant was not willing to accept further information, a meeting to discuss the issues may have been beneficial for both parties with the view to the submission of a new application if the appellant had followed the applicant's advice. I express this view in the context of the appellant's numerous requests and the Framework's advice around engagement and working positively. Further, despite the applicant's clear position, the material submitted in August 2024 by the appellant was placed online. This would indicate to any reasonable observer that the material was being considered even if a different approach was in fact being taken. It is the applicant's responsibility i.e. the Council to ensure documentation aligns with what is being considered even if different officers are doing different things.
19. The material submitted by the appellant in August and September 2024 was provided with a view to finding a solution, having engaged with consultees. This was done in good faith, and the timing of the material submitted in September and the applicant's communication of the decision appears to be coincidental. But the appellant has not taken up the applicant's advice, and hence the subsequent work was done at the appellant's own risk despite the intentions behind that work. Given the applicant's clear stance, there cannot also be an expectation that new material will be accepted as part of the appeal process, especially as that process should not be used to evolve a scheme. However, the material submitted in August and September was not initially submitted during the appeal, as that was only lodged on 4 March 2025, so in that regard it provides important context, but it has, in considering whether to accept amended information as part of the appeal, been necessary for the applicant to consider and address this.
20. The appellant presented four versions of the proposed development in the appeal: the Original Scheme, revision a, revision b, and the Revised Scheme in its appeal. It was not until shortly before the hearing that the appellant confirmed, on my direction, which plans and information they wished the appeal to be determined on.
21. Although the applicant clearly set out its position in terms of the acceptability of any material submitted after 17 July 2024, it did address the merits of each revision and the supporting information if I based my appeal determination upon them. It also outlined its position on that, having regard to procedural and substantive matters. That was a reasonable approach to take, and it required the input of various professionals to analyse that information and prepare the applicant's Statement of Case and then oral submissions at the hearing.
22. Given that I determined that none of the plans after those that formed the Original Scheme should be considered as part of the appeal, and the applicant's clear directions during the planning application, it follows that the appellant's actions and behaviour in evolving and amending the appeal scheme is unreasonable behaviour, as it caused the applicant to carry out extra preparatory work at extra cost. This would not have happened if the appellant had resubmitted a fresh

planning application or alternatively pursued their appeal based on the Original Scheme. Moreover, the applicant has needed to consider and respond to new or updated supporting information. This has also required additional preparatory work and expense that need not have arisen regardless of whether the merits of any of this information have addressed the applicant's concerns.

23. It is also important to bear in mind that parts of both the Amended Layout and the Further Amended Layout contained parts of the proposed development that fell outside of the site edged red. As a result, this raised the question of whether those versions of the scheme accorded with Articles 7(c)(i) and 13(1) of The Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended). It was only at the hearing that the appellant accepted that those plans should in effect be put to one side. The appellant said that they were "minor immaterial alterations to account for errors" that were highlighted in the applicant's Statement of Case, but I am unclear why this issue was not realised earlier, and it took the applicant to carry out unnecessary work comparing the various plans and raising this matter. That is unreasonable behaviour that has caused the applicant unnecessary and wasted expense in the appeal process.
24. Further submissions were made by the appellant in the form of rebuttals (highway and arboricultural) and amended plans on 19 June 2025 with a view to addressing the applicant's concerns. The appellant explained at the hearing how it wished that material to be considered, with much of it to support the proposition that an acceptable scheme could be delivered addressing highway and arboriculture concerns using a Grampian condition. Rebuttal evidence can at times be helpful, but there is no provision to allow it. It was, however, given the technical detail contained therein, submitted relatively shortly before the hearing. This required the applicant to review the material and prepare its responses ready for the hearing. However, on balance, there was sufficient time for the applicant to review the matters contained within the material submitted, and the parties were evidently able to provide substantive responses on the various matters at the hearing.
25. Also, on 19 June 2025, the appellant submitted several plans that overlaid the site edged red on each version of the proposed development's layout. I asked for this to assist with discussions at the hearing. Therefore, any work that the applicant carried on these was not caused by the appellant, as they were simply responding to my request to bring clarity to the situation. The appellant's actions relating to these plans were not unreasonable.

Abnormal costs

26. The fourth reason for refusing planning permission highlighted a number of concerns with the viability assessment submitted with the application. One of these included the lack of information concerning abnormal costs. The applicant set out in its Officer Report that further details would be required to demonstrate how the abnormal figure had been arrived at.
27. The Financial Viability Assessment submitted with the planning application did set out abnormal costs for several categories and explained that a detailed breakdown could be provided on request. It is not clear whether that information was requested or not. While the highway works to Green Lane do influence the scheme's abnormal costs, and it was unclear whether any of the various revisions would have been acceptable in highway terms, the appellant could still have provided the information that related to each revision, whether that be during the planning

application or when the appeal was lodged. This is especially the case for the Revised Scheme, for which the appellant was positively seeking planning permission. In this respect the provision of more detailed information should have been clear to the appellant given the applicant's stance that detailed abnormal information would be required. The opportunity to provide that information in the RVA lodged with the appeal was not taken up. Whether it is the appellant's viability consultant's standard approach or not is not the point.

28. On 16 May 2025, I asked both parties to constructively engage on various matters, including viability, so that the hearing was focused and only covered disputed matters. The Statement of Common Ground ("SoCG") to be submitted on 10 June 2025 was to address whether the scheme could viably make an affordable housing contribution along with contributions for health care and sports facilities/play area. As part of this process, I asked both parties to engage on the various inputs.
29. In response to the applicant's review of the RVA sent to the appellant on 22 May 2025, the appellant's consultant contacted the applicant's viability consultant on 2 June 2025 to ask them how long it would take to review abnormal cost information if it was submitted. The answer provided was "that day" to assess the information in time for the hearing. The abnormal cost information was sent to the applicant on 4 June 2025. This did, despite timing concerns, enable the applicant to review that information and to seek the views of a cost's consultant. Further, it enabled the parties to submit the Viability Statement of Common Ground in accordance with an extended deadline on 20 June 2025.
30. While the applicant has ultimately been able to provide its view on the scheme's viability, it has, nevertheless, needed to respond to information that has only been submitted after the appeal had started and the submission of the RVA, despite the concerns set out in the Officer Report and the fourth reason for refusal. The detailed breakdown of abnormal costs was also only shared nearly three weeks after I had asked both parties to constructively engage on a range of issues, including viability inputs. That information was only provided after the applicant had reviewed the RVA, and hence, the applicant has needed to review the viability evidence twice, not once, within the appeal process. The reason for that is due to the appellant's delay in sharing a detailed breakdown of how the headline abnormal costs in the RVA had been calculated. It was within the appellant's gift to share that evidence far earlier, whether that be as part of the planning application or the appeal. That behaviour is unreasonable, and it has put the applicant to extra work and to incurred unnecessary and wasted expense in the appeal process.
31. For the reasons given above, a full award of costs is not appropriate, as the appeal still considered the Original Scheme which the applicant refused planning permission, and that was considered and determined as part of the appeal. Hence, the appeal was not avoidable altogether given the parties dispute. However, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in two respects. The first is the applicant's consideration of the revised plans and evidence submitted as part of the appeal, save for the rebuttal evidence and the overlay plans. The second aspect is the applicant's additional review of the appellant's viability assessment caused by the delay in providing a detailed breakdown of the abnormal costs. On this basis a partial award of costs is justified.

Costs Order

32. 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 Mulgrave Developments Ltd shall pay to North Yorkshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the applicant's consideration of the revised plans and evidence submitted as part of the appeal and the applicant's additional review of the appellant's viability assessment in the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

33. The applicant is now invited to submit to Mulgrave Developments Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR

Richborough