
Appeal Decision

Inquiry held from 17 - 20 December 2019

Site visit made on 20 December 2019 and 9 January 2020

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/E2734/W/19/3236153

Land at Harrogate Road, Wetherby

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Hallam Land Management and Stockeld Park against Harrogate Borough Council.
 - The application Ref 17/01897/OUTMAJ, is dated 13 April 2017.
 - The development proposed is 'residential development of up to 210 dwellings (partial means of access to but not within the site)'.
-

Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. The proposal submitted is for outline planning permission with all matters reserved apart from access. Appearance, landscaping, layout and scale are reserved for later consideration and the appeal has been determined on this basis, with the layout plans treated as illustrative only.
3. Better Wetherby have been granted Rule 6 status and contend that the proposal should be subject to an Environmental Impact Assessment (EIA). The proposal has been subject to screening by the Council who determined that an EIA was not required. As no substantive evidence is before me to challenge this position, I am satisfied that the proposal should not be subject to an EIA.
4. After the Inquiry, the examining Inspector issued his report into the soundness of the emerging Local Plan (ELP). He concluded that the ELP is sound subject to main modifications (MM). The parties have had the opportunity to comment on this matter insofar as it relates to the appeal.
5. An accompanied site visit with the main parties was undertaken on 20 December 2019. However, owing to weather conditions, I revisited the site surroundings unaccompanied on 9 January 2020.

Main Issues

6. Since the submission of the appeal, the Council confirmed that they were minded to refuse planning permission on five grounds, namely on the basis of conflict with the ELP, the effect of the proposal on the landscape character of

the area, the loss of agricultural land, the effect of the proposal on the highway network and air quality in the context of the Kirk Deighton SAC/SSSI.

7. Following the submission of additional evidence, the Council no longer seek to defend the putative reasons for refusal relating to the highway network and the Kirk Deighton SAC/SSSI. However, the highway effects of the proposal and the hydrological effect of the development on the Kirk Deighton SAC/SSSI are in dispute between the appellants and Better Wetherby. I return to matters relating to the Kirk Deighton SAC/SSSI and agricultural land as part of the overall planning balance.
8. Thus, the main issues are the effect of the proposal on:
 - the character and appearance of the surrounding area; and,
 - highway safety and the road network, including whether future occupants of the proposed development would be dependent on private vehicular modes of transport.

Reasons

Character and Appearance

9. The appeal site comprises open fields bounded by The Harland Way (a public right of way) to the north, the A661 (Harrogate Road) to the south, and open fields further north and south. Wetherby, including the Bellway residential development (currently under construction), is to the east of the site with open fields to the west. Two bridleways are near the site to the north west (reference 15.68/7/1) and to the south east (reference 15.68/10/1). The south east public right of way marks the administrative boundary with Leeds City Council (LCC), within which Wetherby is located. The main parties agree that the immediate landscape is of medium value and not a 'valued' landscape in National Planning Policy Framework (the Framework) terms.
10. Core Strategy (CS) Policy SG3 states that outside the development and infill limits of the settlements listed in Policy SG2, land will be classified as countryside and there will be strict control over new development in accordance with national planning policy protecting the countryside. The appeal site does not adjoin a settlement listed in CS Policy SG2 and for planning purposes occupies a countryside location. The proposal therefore conflicts with CS policies SG2 and SG3.
11. The open agricultural appearance of the site visually ties it into the wider countryside character to the west and south of the site. However it is seen against the backdrop of the built form of Wetherby, in particular the Bellway site, where development is to be constructed up close to the western boundary. The visual influence of this development is already evident. The submitted plans show significant landscaping, with the built form set back from Harrogate Road.
12. The site lies within Landscape Character Type 56: Plompton and South Knaresborough Arable Land as identified by the Landscape Character Assessment Supplementary Planning Guidance (SPG) document. Key characteristics of this area include gently rolling landform and the open nature of the landscape combined with uniform land use in random large fields, which have resulted in a landscape which is sensitive to change. The large open fields

and hedgerow boundaries at the site replicate some of these key characteristics. The associated landform changes and loss of open field patterns would have an adverse effect on this character.

13. As bridleway 15.68/10/1 to the eastern site boundary will include residential development at the Bellway Site, views of houses would not be unusual. However, this section of the public right of way currently provides open views across the site. The proposal would result in the loss of these views. The extent of this loss, taking into account its proximity and the scale of development proposed, would result in unacceptable harm for users of the bridleway and whilst I acknowledge that the effects could be mitigated to some extent through new planting, the sense of a large development would remain.
14. Despite the backdrop of Wetherby and the Bellway site, the proposal would bring a sizeable form of development closer to bridleway 15.68/7/1. Although the path is sited in a north west direction with only a small section facing directly towards the site, this would be a noticeable change in view for users of this bridleway. This change would be particularly experienced south from the bridge over the Harland Way onwards. The resultant effect would be significant and harmful and would remain materially harmful beyond the establishment of new planting.
15. There would be lesser effects from the Harland Way as much of it is cut into the landscape and new planting would eventually prevent any material harm in views from along this route where they would be possible. In addition, owing to the separation distances involved, the proposal would not lead to visual coalescence with other settlements. I also accept that there would be some improvement to the edge of Wetherby through new planting and that there would be no significant effects in views from the A661, including night-time views. However, none of this is sufficient to alter my view that the proposal would, overall, be harmful to the area's character and appearance.
16. Therefore, the proposal would have a harmful effect on the character and appearance of the surrounding area. Consequently, in addition to the identified harm against CS policies SG2 and SG3, the proposal would be contrary to CS policies, SG4, EQ2, saved Local Plan Policy C2, and ELP policies NE4 and HP5. Combined and insofar as they relate to this matter, these policies seek to ensure that development in the countryside is strictly controlled, is sympathetic to landscape character, and protects the recreational and amenity value of rights of way. The proposal also conflicts with the aim of the Landscape Character SPG to conserve landscape pattern and landform characteristics.

Highway Safety and Road Network

17. Wetherby contains a range of services and facilities that can be reached by walking, cycling and bus. To connect future occupants to services, pavement provision and widening is proposed along the initial northern section of the A661. As the resultant pavement widths would be between 1.6m and 2m, they would accommodate wheelchair users based on the 0.9m width identified by Manual for Streets. The edge of Wetherby town centre would entail a walk of about 25 minutes along lit sections of the A661. Whilst the character of this route might not be attractive to all users, the Harland Way would provide a walkable and cyclable route during daylight. In addition, the illustrative masterplan shows pedestrian routes connecting with the Bellway site. Overall,

the site location and routes available would provide reasonable opportunities for future occupants to walk and cycle to services and facilities.

18. Based on the bus travel times involved, employment opportunities at larger settlements such as Leeds would not be an attractive alternative to the car. However, employment opportunities by regular bus services would be available at Wetherby and Harrogate. In addition, the site is located next to a Key Bus Network and a Public Transport Corridor, identified by the CS and the ELP in recognition of public transport accessibility. Furthermore, the Section 106 agreement (S106) would secure shelters and real time passenger information displays for the two nearest bus stops on Spofforth Hill.
19. Safety concerns have been raised regarding crossing Spofforth Hill to access westbound bus services to Harrogate and Spofforth Primary school. The proposal would also increase traffic along Spofforth Hill. A 75m visibility splay is proposed to ensure pedestrians would have sufficient visibility to the west when crossing Spofforth Hill to access westbound bus services to Harrogate and Spofforth Primary school. This distance is based on a continuous 7-day speed survey, the use of 85th percentile speed data, and a Stopping Sight Distance formula contained within the Design Manual for Roads and Bridges. Whilst the proposal would increase pedestrian activity at a busy highway, the appellants' submitted evidence identifies no highway collisions at this section for over the last 5 years.
20. Crossing to the bus stop at this point could present difficulties for wheelchair and pram users and be unattractive for some pedestrians such as parents with children. However, a planning condition could ensure a pavement design that allows a wider range of users to cross at this point. Moreover NYCC and LCC highway raise no objection on safety grounds. Thus based on the submitted evidence and subject to planning conditions, the proposal would not have an unacceptable effect on pedestrian safety.
21. The proposal scores negatively against accessibility criteria contained within the CS (appendix 8) and the LCC Core Strategy. However, appeal decisions are cited which indicate that the LCC accessibility criteria have been applied flexibly, a stance LCC has previously taken. The Council also set out that they have taken a flexible approach to the CS accessibility criteria where bus and cycle provision is considered to be good. The Framework at paragraph 108a) seeks to ensure that appropriate opportunities to promote sustainable transport modes can be, or have been taken up, given the type of development and its location. Based on the reasons above and accounting for measures within the TP, reasonable opportunities for future occupants to utilise non-private vehicular means of transport exist. As such future occupants would not be dependent on private vehicular transport.
22. In relation to the road network, paragraph 109 of the Framework sets out that development should only be prevented or refused on highway grounds if the residual cumulative impacts on the road network would be severe.
23. The TP and the scope and methodology of the Transport Assessment and Transport Assessment Addendum were agreed between the appellants and North Yorkshire County Council. These documents include committed developments, use of flat demand traffic profiles, identify locations to be assessed and use TRICS (an industry standard tool), validated by survey

counts from housing development at Glebe Road. Overall, I have no compelling reason or substantive evidence to doubt the adequacy of the TA and TAA.

24. The appellants and LCC have not produced a Statement of Common Ground and traffic congestion and highway safety concerns were raised by LCC, including in a letter¹ submitted at the Inquiry. However the letter submitted by the appellants² indicates LCC have withdrawn their highway related concerns following completion of the S106 agreement.
25. Moreover NYCC highway authority do not object to the proposal and despite raising concerns, LCC highway authority have set out that it would be difficult to sustain a reason for refusal on traffic impact in the context of the Framework and raise no objection. These respective positions were on the basis of the 2016 assessment which indicated greater levels of traffic than the 2019 assessment. In addition, although no specific off site highway mitigation measure has been identified, the signing of the S106 by LCC and NYCC indicate sufficient mitigation could be secured, and I note a list of mitigation measures identified by the appellants. In such circumstances and with no substantive case to the contrary, the evidence indicates that the residual impacts on the road network would not be severe.
26. Therefore, the proposal would not have a harmful effect on highway safety and the road network, and future occupants of the proposed development would not be dependent on private vehicular modes of transport. Consequently, the proposal would meet the requirement of CS policies SG4, TRA1, emerging LP policies TI1 and TI4 and paragraphs 108 and 109 of the Framework insofar as they relate to this matter. Combined, these policies require that development promotes sustainable transport, is well related and accessible to the key bus network/key bus service corridor, does not have an unacceptable impact on highway safety or a severe residual cumulative impact on the road network.

Planning Obligation

27. A signed S106 agreement dated 28 November 2019 has been submitted. The S106 agreement would secure provision of affordable housing and public open space. It would also secure financial contributions to upgrade two bus stops on Spofforth Hill, off-site highway works, off-site public open space, primary and secondary school education, TP monitoring, a traffic regulation order and the provision or upgrading of Deighton Community Centre.
28. Since the Inquiry, the Council confirmed that it is not able to demonstrate that a community centre contribution would be necessary to make the development acceptable in planning terms. I have no reason to disagree with this position. However, as I am dismissing the appeal for other substantive reasons, I have not pursued the absence of a specific project for off-site highway mitigation works any further. This aside, based on the justification provided in the CIL Compliance Statement, I am satisfied that the remaining obligations sought meet the relevant statutory tests.

The Planning Balance

¹ Dated 19 December 2019,

² Dated 11 October 2019.

29. As the growth and distribution strategy of CS policies SG1, SG2 and SG3 are based on an out of date lower housing need figure derived from the withdrawn Regional Spatial Strategy, it is common ground between the main parties that the policies most important for determining the application are out of date and paragraph 11d ii) of the Framework applies. This paragraph requires granting permission for development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
30. The proposal would result in benefits from its contribution to housing choice and supply, including on site affordable housing. The appellants set out that market and affordable housing completions have been below the ELP requirement and that there is a shortfall in affordable housing delivery against the CS (which has a plan period of 2008-2023) since 2011. Furthermore, the CS acknowledges affordable housing need could not be met even if all new houses were affordable. I also note the affordable housing waiting list provided by the appellants, which has increased over the past 12 months. Affordable housing requests at the Wharfedales villages sub-area 7 (an area with a Green Belt) also vastly exceed completions. However, the evidence indicates that the ELP³would meet the objectively assessed housing needs for the borough moving forward. Furthermore, the Council's housing land supply figure of 6.71 is agreed, which indicates that flexibility exists to meet needs and any shortfall. In addition the ELP Inspector considers that the plan provides plenty of flexibility in respect of housing supply.
31. Based on the appellants figures, the backlog of affordable housing supply in LCC on plan wide area as of 2016/17 is appreciable. In addition, the Wetherby Housing Market Assessment identifies a number of households on the housing register as of March 2015. However since then LCC have adopted its Site Allocations Plan (SAP, July 2019) and the amended LCC Core Strategy (September 2019). Furthermore, Better Wetherby's case indicates that affordable housing is being delivered in Wetherby beyond the sites identified by the appellants. A brief reference to the deletion of the Parlington new settlement allocation is made by the appellants. However, there is no substantive evidence before me to conclude that LCC's recently adopted CS review and SAP are deficient in affordable housing provision. Furthermore, the ELP Inspector's Report indicates that LCC will meet its own needs. Nevertheless, affordable housing is a notable benefit associated with the proposal. Consequently, the contribution of the proposal to the supply and choice of market and affordable housing attracts significant weight.
32. The development would trigger a New Homes Bonus payment but there is no evidence of a connection between the payment and the development to enable it to be taken into account in accordance with advice in the Planning Practice Guidance. Accordingly, whilst the New Homes Bonus is a material planning consideration, it is not one to which positive weight can be attached. Furthermore, whilst there would be Council Tax revenue from the development, there would also be new occupiers to serve. As such, this revenue would mitigate the effects of the proposal and the demand of those future occupiers on local services and is a neutral factor in the planning balance.

³ Which is based on the most recent evidence of need.

33. The proposal would support construction employment and local businesses. In addition, the benefits of the onsite public open space and contribution, improvements to the Harland Way and bus stops would not be solely confined to future residents. As the proposal includes a large proportion of green infrastructure, environmental and biodiversity benefits would also arise. Overall, taking into account the scale of these benefits, combined they attract modest favourable weight.
34. Paragraph 213 of the Framework states that due weight should be given to policies according to their degree of consistency with the Framework. Paragraph 49 of the Framework states that weight may be given to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections, and the degree of consistency of the relevant policies in the emerging plan to the Framework. Following publication of the Inspector's Report, the ELP policies are considered to be consistent with national policy as this is a soundness test set by the Framework. In addition, the publication of the Inspector's Report indicates that there are no unresolved objections. Coupled with the advanced stage of the ELP, I afford significant weight to ELP policies. Furthermore the Council intend to decide on the formal adoption of the ELP (when it will then become part of the development plan) in early March and no evidence is before me to indicate that the plan is unlikely to be adopted.
35. As identified above, the proposal would have a harmful effect in terms of character and appearance and thus conflict with paragraph 170b of the Framework, which recognises the intrinsic character and beauty of the countryside. Associated with this harm is conflict with CS policies SG3, SG4, EQ2, saved Local Plan Policy C2, and ELP policies NE4 and HP5.
36. As CS policies SG1, SG2 and SG3 are out of date, I afford the conflict of the proposal with them minimal and non-determinative weight. Reference to 'protect' within Local Plan Policy C2 is inconsistent with paragraph 170b of the Framework. As such I afford the conflict of the proposal with this policy limited weight. Whilst Policy EQ2 seeks to protect the landscape character of the whole district, it does so subject to the need to plan for new greenfield development. It also seeks to give a level of protection to the natural environment appropriate to its local importance. As such, the level of protection it offers is qualified and thus it is not inconsistent with paragraph 170b of the Framework. It is these cited elements of Policy EQ2 that the proposal conflicts with. As such I afford full weight to the conflict of the proposal with Policy EQ2.
37. Of relevance, CS Policy SG4 at criterion 1 broadly seeks to ensure development integrates well with its surroundings and is appropriate in form to landscape character. As this is consistent with paragraph 127 and 170b) of the Framework, I afford full weight to the conflict of the proposal with criterion 1 of Policy SG4, and criterion 4 which of relevance seeks compliance with Policy EQ2. I afford significant weight to the conflict of the proposal with ELP Policy NE4 (in particular criteria B, C and E) and Policy HP5 (criterion A). Overall, significant weight is attributed to the harm of the proposal to character and appearance and its associated policy conflict.

38. In line with ELP Policy NE8, an Agricultural Land report has been produced and identifies that the proposal would result in the loss of 4 hectares⁴ of best and most versatile agricultural land, comprising an economic loss of £896 per annum. Although Policy NE8 acknowledges that benefits that could justify the loss of the best and most versatile agricultural land, it sets out permission for development affecting such land will only be granted exceptionally if there is an overriding need for the development. As the ELP will meet housing needs, there is no overriding need for the development and the proposal would conflict with ELP Policy NE8. I afford significant weight to this conflict. The use of best and most versatile land associated with some of the other ELP housing allocations or the absence of an objection from Natural England does not reduce or prevent this harm.
39. Criterion A of ELP Policy GS1 is of relevance. However, as this criterion sets out what the minimum housing figure for the plan is, exceeding it by the extent proposed would not result in any material policy conflict. ELP Policy GS2 sets the growth strategy for the area. The appeal site is located outside a settlement and is on a key public transport corridor. However, whilst the scale of development would reflect some of the factors at criteria A – F, the development would not be within a settlement identified by criteria 1 to 3 of Policy GS2. Furthermore the site is not identified within a location in the settlement hierarchy. As such it forms part of the wider countryside, where development will only be appropriate if permitted by other policies of the plan, or national policy. No other permitting policies have been identified. Thus the proposal would conflict with Policy GS2. I afford significant weight to this policy conflict.
40. ELP Policy GS3 sets development limits around settlements listed in Policy GS2 and supports development within them provided they are in accordance with other relevant ELP policies. ELP Policy GS3 sets out that outside development limits, proposals for new development will only be supported where expressly permitted by other policies of the plan or national planning policy. No other permitting policies have been identified. In addition, criteria A – D only apply when the Council is unable to demonstrate a five year supply of housing land; such circumstances do not prevail. Consequently the proposal would conflict with ELP Policy GS3. I afford significant weight to the conflict of the proposal with ELP Policy GS3. The site is listed as a housing allocation in ELP Policy DM1, a policy which intends to deliver the amount of new homes needed as identified under Policy GS1. However, the policy itself does not prohibit sites being developed beyond those it lists. Therefore I find no conflict between the proposal and Policy DM1.
41. The appellants contend that Wetherby does not have appropriate settlement boundaries, and that the circumstances are unique and should be accounted for. In this light, within the amended LCC Core Strategy, I note that Wetherby is identified as a Major Settlement. In particular, owing to the Bellway development, it was put to me that the settlement limits in the LCC SAP are out of date. However, the LCC SAP was adopted after the Bellway site was granted permission and I understand that redefining settlement boundaries were not part of its scope. Moreover, the evidence indicates that LCC does not have any unmet needs. Indeed, the ELP Inspector raised no concerns in terms

⁴ Comprising 0.4 ha Grade 2 and 3.6ha Grade 3a.

of the duty to incorporate, despite concerns raised regarding the future development of Wetherby. Nor does the evidence indicate that LCC cannot demonstrate a five year supply of housing land. Whilst a number of appeal decisions have been cited, none of them involve circumstances similar to the current ELP position. Thus, the above factors attract limited weight only.

42. I have a statutory duty to have special regard to the desirability of preserving a listed building or its setting. A number of listed buildings are within the site surroundings. However I have no reason to disagree with the Council's acceptance of the proposal in this respect.
43. Drawing the above together, a number of benefits are associated with the proposal, which includes its contribution to the supply and choice of market and affordable housing, and its provision of a large proportion of green infrastructure. In addition, a prematurity case in respect of the ELP is not advanced by the Council and Better Wetherby. However, the housing related benefits are tempered for the reasons given above, including the extent of five year housing land supply and current position of the ELP, which would significantly boost the supply of homes. Furthermore harm and policy conflict are associated with the development in terms of character and appearance and best and most versatile agricultural land.
44. Moreover the proposal would conflict with a number of ELP policies (cited above) and the ELP is at a very advanced stage. Consequently, the proposal would be inconsistent with paragraph 15 of the Framework which states that the planning system should be genuinely plan-led, a factor which attracts considerable weight. In totality the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits associated with the proposal, when assessed against the policies in the Framework taken as a whole. There is no reason to take a decision other than in accordance with the development plan and as such the appeal must fail.

Other Matters

45. The Framework sets out that the absence of an appropriate assessment that has concluded that a project will not adversely affect the integrity of a habitats site is a factor that would disapply the presumption in favour of sustainable development. However, as the identified adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits, the completion of an appropriate assessment would not alter the appeal outcome. Therefore, it is not necessary that I consider the effect of the proposal on the Kirk Deighton SAC/SSSI any further.

Conclusion

46. For the reasons given above, the appeal is dismissed.

B Bowker

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Andrew Williamson	Instructed by Robert Moore, Director of Walker Morris LLP
He called	
Brian Denney BA (Hons) DIPLA FLI CENV MIEMA	Chartered Landscape Architect, Pegasus Group
Greg Jones BA (Hons) MSc MCIHT	Associate Planner, I-Transport LLP
Jonathan Dunbavin BSc MCD MRTPI	Director, ID Planning
Laurence Caird MEarthSci CSci MIEnvSc MIAQM	Associate Director, Air Quality Consultants Ltd
Dr Keith Emmett M Eng PHD PE cert	Senior Engineer, Eastwood & Partners Consulting Engineers
Kurt Goodman, BSc, MSc, MCIEEM	Director, Ecology FPCR Environment and Design Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Whale of Landmark Chambers	Instructed by Harrogate Borough Council
He called	
Natasha Durham MA (Hons) MRTPI	Planning Policy Manager
Barrie Gannon DIP UD MA CMLI	Principal Landscape Architect
Kate Williams MTCP (Hons) MRTPI	Principal Planning Officer

FOR BETTER WETHERBY:

Paul Crossan	Instructed by Better Wetherby
He called	
Michael Spence BA (Hons)	MSEnvironmental
MLD CMLI REIA FRGS	
David Howard BSc (Hons)	Better Wetherby
Chris McIntosh	Local resident
Mike McKinley	Local resident
Mark Smith	Local resident
Eric Cowin	Local resident

INTERESTED PERSONS:

Cllr Andrew Paraskos	Ward Member for Spofforth with Lower Wharfdale
Cllr Alan Lamb	Ward Member for Wetherby, Leeds City Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Statement of Harrogate Borough Council.
2. Appellants Opening Statement.
3. Opening Statement of Better Wetherby.
4. Ground Water Flooding Map.
5. Listed building description for Stockeld Lodge Farm.
6. Email from Leeds City Council dated 11 October 2019.
7. Listed building description for Stockeld Park House.
8. Solid and Drift Geology Map.
9. Statement of Dave Howard on behalf of Better Wetherby.
10. Third party representations list.
11. Local Planning Authority Statement in relation to appeal at Birthwaite Lane, Ripley.
12. Summary of Evidence in Chief of Paul Crossan on behalf of Better Wetherby.
13. Location and site plan in relation to proposed development at land at Bar Lane, Knaresborough.
14. Email from Leeds City Council dated 19 December 2019.
15. Signed and dated Section 106 Agreement.
16. Details regarding Wetherby settlement development boundary.
17. Closing Statement of the Council.
18. Closing Submission of Better Wetherby.
19. Closing Submissions of the Appellants.

DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. List of revised planning conditions.
2. Email regarding Village Halls Assessment.
3. Letter from the ELP Inspector, dated 7 January 2020.
4. Report on the Examination of the Harrogate District Local Plan dated 30 January 2020.