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## Appeal Decision

Inquiry held on 2 - 9 April 2019

Site visit made on 8 April 2019

**by Phillip J G Ware BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5<sup>th</sup> June 2019

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**Appeal Ref: APP/E2001/W/18/3207411**

**Land to the south of Williamsfield Road, Hutton Cranswick YO25 9BH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Williamsfield Developments Ltd against the decision of East Riding of Yorkshire Council.
  - The application Ref DC/17/03880/STOUT/STRAT, dated 14 November 2017, was refused by notice dated 26 January 2018.
  - The development proposed is the erection of up to 67 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The proposal is in outline, with all matters reserved aside from the access to the site.
3. A Unilateral Planning Obligation<sup>1</sup> was submitted in draft form, discussed at the Inquiry and subsequently finalised. I have taken it into account.

### Main Issues

4. Two matters cited in the reasons for refusal were not subsequently pursued by the Council<sup>2</sup>. These relate to issues concerning isolated dwellings in the countryside and the proximity of a public right of way (no.14).
5. The proposed access from the north, through a development under construction, has not been the subject of objection by the Council or the local highway authority. Residents' concerns related to highway and drainage matters were comprehensively addressed in the Transport and Drainage Assessments<sup>3</sup>, and I have no reason to disagree with the conclusions therein.
6. With that background, there are two main issues in this appeal:

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<sup>1</sup> Document 9

<sup>2</sup> Statement of Common Ground Section 7

<sup>3</sup> Statement of Common Ground paragraphs 6.2 – 6.5

- Whether the site is suitable for development, in the light of the locational policies in the development plan and other material considerations, including the housing land supply position.
- The effect of the proposal on the character and appearance of the area.

## Reasons

7. The appeal site is around 3.6 ha in extent and is a broadly level field lying to the south of a new housing development (partly still under construction) – Phases 1 and 2 of the Williamsfield Road scheme<sup>4</sup>. The field is generally bounded by mature hedgerows and trees on three sides, with the new housing development to the north. That part of the Phase 2 development closest to the current appeal site is to be laid out as open space.
8. To the northeast and northwest, on either side of the Williamsfield Road development, are existing dwellings fronting Station Road, which typify the characteristic ribbon development of much of the settlement. There is more recent development at Sheepman Lane to the northeast and, beyond the railway line to the west, at Beech View and Laburnum Avenue. A footpath runs along the southern boundary of the site, and across the railway line. There is a level crossing on Station Road.
9. The proposal is accompanied by an indicative layout<sup>5</sup> showing the retention of the hedgerow boundaries, two areas of public open space, structural planting and works to habitats.

### *Planning policy background*

10. The development plan includes the East Riding Local Plan Strategy Document (LPSD) (April 2016) and the East Riding Local Plan Allocation Document (LPAD) (July 2016).
11. The appeal site is outside the development limits as set out in the LPSD and is not identified as a housing allocation in the LPAD. The site was apparently promoted by the appellant as a potential housing site through the LPAD process, but it was rejected as it was considered to be poorly related to the main body of the settlement and to be an intrusion into the countryside.
12. The approach of LPSD Policy S3 is to focus development within the defined settlement network - including Rural Service Centres (RSC) such as Hutton Cranswick. LPSD policy S4 defines land outside the settlement limits such as the appeal site as being countryside – within which only certain types of development will be supported. None of these types of development are argued in this case and the appellant accepts that the proposal is contrary to these policies.
13. Hutton Cranswick has a housing requirement of 170 dwellings (LPAD Policy S5), which is intended to accommodate growth within the development limits. To this end the LPSD identifies five allocated Hutton Cranswick housing sites (not including the appeal site). The appellant's position is that LPAD policy S5 is failing in that insufficient housing is being provided, and that it will continue to fail if policies S3 and S4 are applied.

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<sup>4</sup> Approved on appeal 2009 and 2011 (SOCG Section 4)

<sup>5</sup> Statement of Common Ground paragraph 3.5

14. The appellant therefore considers that there is a tension between Policy S5 and Policies S3/4. I do not agree. Policy S5 provides for a minimum 170 dwellings over the plan period (i.e. to 2029), but there is no policy or guidance which suggest any particular trajectory for the delivery of housing. The necessary development could therefore come forward at any time during the plan period – although I recognise that common sense dictates that, the closer one gets to the end of the plan period without approaching the housing target, the less likely it is to be achieved. However the position is far from that point at present. I also appreciate that some of the LPSD allocated sites, most notably CRA-C, have been allocated for a significant period of time. However the Council produced evidence of a flow of housing coming forward in the settlement, albeit that most of this has been on windfall sites rather than on allocations.
15. In any event, even if I were to accept that there has been a slow rate of housing delivery in Hutton Cranswick, there is no settlement specific delivery test. I am not persuaded that there is support in the development plan for housing outside the settlement limit.
16. On that basis, I am not persuaded that there is any tension between the policies, rather it seems to me that they are intended to provide a balance between the delivery of housing to meet defined needs and the protection of the countryside. This approach has been followed in a number of appeal decisions<sup>6</sup>.
17. There was also a suggestion by the appellant that LPAD policy A3, dealing with the general approach within the sub area, could be used to (in effect) overcome the restrictive approach of policies S3 and S4. However it is clear to me that policy A3 sets overall goals, which are intended to be delivered through other plan policies – including S3, S4, S5 and allocations in the LPAD. I do not consider that policy A3 works against or reduces the weight to be accorded to the other policies.
18. I will deal with landscape policies in a later section, and at this stage I only note that LPSD policies ENV1 and ENV2 (a) are agreed to be material. They deal with the appearance of the area and the wider context, and the need for development to integrate into the existing landscape. Other policies in the development plan are listed in the Statement of Common Ground<sup>7</sup>.
19. For completeness, I understand that the East Riding Local Plan Review is in preparation, and is estimated to be adopted by 2022. However, given the very early stage which this has reached no party suggested that it be accorded weight at this time.
20. Overall the proposal does not conform to the relevant locational policies of the development plan, as the site is outside the settlement limit and is in the open countryside in policy terms. I now turn to the housing land supply position, which is capable of being a material consideration to outweigh this policy conflict.

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<sup>6</sup> Appellant's Closing Paragraphs 7 and 9

<sup>7</sup> Paragraphs 5.4 and 5.5

*The provision of general needs and affordable housing*

21. An initial point is that the provision of general needs housing and a policy compliant level of affordable housing is to be welcomed in terms of local and national policies aimed at boosting the supply of housing. This is a significant benefit of the proposal.
22. However the importance of the extent of the housing land supply relates particularly to paragraph 11 of the National Planning Policy Framework (the Framework). The Council's claimed ability to demonstrate a five-year supply of deliverable housing is disputed by the appellants. The primary consequence of any failure to maintain this level of supply is to render policies for the provision of housing out-of-date in accordance with the Framework, and thereby trigger the so-called 'tilted balance'.
23. The parties agreed a range of matters, most particularly the relevant requirement figure, gross versus net completions, the current shortfall and the need to make up the deficit within 5 years and the use of a 5% buffer. The key issue between the parties is whether the Council's supply figures are reasonable in the light of the Framework and Planning Policy Guidance (PPG). This dispute focusses around whether a number of the Council's claimed supply sites are deliverable. The appellants confirmed at the Inquiry that this was their underlying concern.
24. During the course of the Inquiry, and particularly during the round table session on housing land supply, the parties moved closer together – but they remained just below and above the 5 year supply point at 4.5 and 5.1 (rounded figures) respectively<sup>8</sup>. The issue relates not so much to the details of individual sites but to a number of general criticisms by the appellants of the Council's overall approach. I will deal with these in turn below.
25. Before turning to these general criticisms, it is important to note that the housing land supply position has been considered three times in the relatively recent past – as part of the local plan examination and in relation to the two appeals concerning Williamsfield Road Phases 1 and 2<sup>9</sup>. In each case, although I do not have details of the material before those Inspectors, it was concluded that the Council had a five year supply. In addition, it is noteworthy that the appellant did not suggest that, even were there to be a shortfall in housing land supply, that would in itself justify allowing the appeal in the event of a conflict with locational and landscape policies.
26. Although I have sufficient material to come to a conclusion on the general extent of the supply, the proper forum for determining the precise position is as part of the development plan process. In that forum a full range of all interested parties' views can be taken into account, which I cannot replicate in the context of a s78 appeal with inevitably more limited evidence.
27. I will now turn to the general themes related to the appellant's criticisms of the Council's position, as discussed at the Inquiry. These can be summarised as follows:

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<sup>8</sup> The appellant's position is that, setting the bar as per the Council's highest case, there is still a shortfall in the 5 year supply – 4.9 years

<sup>9</sup> As set out at Council's closing Paragraph 29.

- The authority did not seek any formal Statements of Common Ground (SOCG) between those in control/with knowledge of the sites and the Council. Instead there was, in most instances, an ostensibly less formal exchange of correspondence and the completion of a proforma. The appellant considers that this approach reduces the reliability of the results. Although PPG refers to the use of a SOCG, this approach is not mandatory and other mechanisms are not discouraged. I fail to see any fundamental difference between the way the Council has approached the collation of information and a slightly more formal SOCG. The site specific evidence was produced using a robust methodology and the Council, in a number of instances, did not automatically accept the results of the exercise at face value – for example in some cases the authority assumed a longer lead in time. Although the Council could have adopted the SOCG approach, it is far from clear that this would have resulted in significantly different results.
- The appellant’s position is that the Council did not adopt an approach to deliverability in line with the definition in the Glossary to the Framework. This states that (amongst other matters) for housing sites to be considered deliverable, they should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. The definition includes the need for clear evidence. The 2019 Framework has ‘raised the bar’ related to deliverability in comparison with earlier Framework iterations and other national advice. However there is no definition of what constitutes ‘clear evidence’ of future delivery and, as the appellant accepted, there is no defined minimum criterion. In my view, the appellant – in using a ‘highly likely’ test - has raised the bar significantly above that advised in national policy and guidance. This would make it difficult for any recently adopted plan to survive an appeal against a s78 refusal based on five year housing land supply. In contrast, I find that the Council’s approach is soundly based on national policy and guidance.
- The appellants criticised some of the Council’s supply sites on the basis that they were not under the control of a housebuilder, but of a land promoter. I appreciate that this puts the sites one step further away from actual development, but it is clearly in land promoters’ interests to sell rapidly to housebuilders. Their business model would require this, as without a rapid sale they cannot obtain a speedy return on their investment. The involvement of promoters is recognised in national guidance, and there is no implication that such sites are less likely to come forward during the first five year period. The fact that the responses to the Council’s enquiries came from different participants in the process does not necessarily lead to an automatic reduction in the weight to be attributed to some replies.
- In some cases there was no response to the Council’s enquiry as to potential delivery. In such cases the authority used the judgement and expertise of its officers to assess the likelihood of delivery, using a careful methodology. It is noteworthy that the Council did not include all such ‘nil-return’ sites.

28. For these reasons, I find the Council’s approach to the assessment of the supply side of the equation to be robust and in line with national policy and

guidance. Under these circumstances, there is no need to interrogate the sites in individual detail as the criticism of the inclusion of contested sites fall very largely within the ambit of the above matters. On the evidence before me, I conclude that the Council has a five year supply of deliverable housing sites, and the 'tilted balance' does not apply.

29. In conclusion on the first main issue, the site is not suitable for development, in the light of the locational policies in the development plan and other material considerations, including the housing land supply position.

*The effect on the character and appearance of the area*

30. Although national policy recognises the intrinsic character and beauty of the countryside, the appeal site and its surroundings are not a designated or valued landscape in terms of the Framework. The land to the east of the site is Hutton Cranswick Meadow, which is a candidate local wildlife site.
31. The appellant accepted that the proposal conflicts with LPSD policies ENV1 and ENV2, and it is common ground that the difference between the parties centres on the extent of the conflict and the weight to be accorded to it. There are two landscape character areas surrounding Hutton Cranswick<sup>10</sup>, but a more localised assessment is necessary in this case.
32. The site is a long and relatively narrow finger of land projecting south of the existing Phase 1 and 2 developments into open countryside. To the east, west and south of the appeal site are open fields, whose generally long narrow form has a degree of local significance, as was discussed at the Inquiry. Beyond the immediate fields there are some housing areas. This is especially the case in relation to Beech View and Laburnum Avenue, to the west beyond the railway line, within an area which apparently grew up around a historic link to a manor. However, from the evidence and from my site visit, it is clear that there is a considerable degree of separation between this part of the existing settlement and the appeal site, even allowing for the occasional intrusion of passing trains.
33. On that basis, the proposal would not relate well to the existing settlement pattern but would represent an extension of the settlement into largely open and undeveloped countryside. The development would impact on several key characteristics of those fields. In my opinion, the area has a high-medium sensitivity to change, and the proposal would result in a high-medium magnitude of change. Overall I agree with the Council's assessment that the effect would be substantial adverse.
34. I am conscious that the appeal decisions which allowed Phases 1 and 2 to the north dealt with the 'rounding off' of the existing settlement. However this is not an argument which can be applied to the appeal proposal due to the lack of any significant relationship with existing development. Nor would the appeal proposal appear as a logical continuation of Phase 2, as there would be an intervening public open space which would further emphasise the disconnect between the appeal scheme and existing development.
35. In coming to my conclusions on landscape impact, I have carefully considered the differences between the professional landscape witnesses on a range of

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<sup>10</sup> LCT 16 and LCT 16E

matters, including landscape and scenic quality. A number of these are matters of professional opinion. In addition there are some areas of the appellant's approach which were explored at the Inquiry and which the Council maintained weakened the appellant's position. I do not agree in a number of respects. These matters include an acknowledged error in Table 1 of the LVIA relating to the current use of the site, and the approach towards the role of visibility of the landscape.

36. However there are two matters which, taken together, do materially detract from the appellant's landscape position and add weight to my conclusion regarding the negative landscape impact:
- The first step in an assessment of a proposal's effect must be to assess the benchmark position and the susceptibility of the landscape. However, as accepted by the appellant's landscape witness, this was not an exercise undertaken in the LVIA.
  - Perhaps the most important issue stems from the apparently contradictory approach adopted by the appellant's LVIA and Inquiry evidence. The LVIA did not consider the effect of the proposal beyond the site boundary, for no clear reason. Especially given the broadly level nature of the surrounding countryside, there must logically be an effect beyond the site itself, but its magnitude and consequences were not considered. In contrast, the appellant's evidence at the Inquiry addressed the settlement landscape aside from the appeal site. The Council characterised this as a 'polo mint effect' as it omitted the effect on the character of the area including the appeal site. The two different approaches, neither of which provides a full analysis of the effect of the proposal, were not satisfactorily explained and this weakens the appellant's position.
37. Overall, I consider that the proposal would harm the character and appearance of the area, and conflict with LPSD policies ENV1 and ENV2 (a).

*Other matters*

38. The Unilateral Planning Obligation deals with a range of matters, including the provision, future management and maintenance of open space and the provision of a policy compliant level of affordable housing. In addition, a contribution towards enhancements to the railway footpath crossing and road signage is included. It was confirmed at the Inquiry that the impact of the proposal on the vehicular and pedestrian crossings have been discussed with Network Rail, who have agreed the amounts and the delivery of the works.
39. These matters are directly related to the proposal and are necessary to make the development acceptable in planning terms. Therefore I consider that the Obligation meets the policy in paragraph 56 of the National Planning Policy Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. However, aside from the provision of affordable housing (to which I attach significant weight), the provisions are essentially intended to mitigate the effect of the development - although they could be of some benefit to the wider public, and I have therefore given them very limited weight.

*Planning balance and conclusion*

40. For the reasons set out above, the proposal conflicts with the locational and landscape policies in the development plan. The evidence before me leads to the conclusion that the authority has a five year housing land supply, and therefore as the proposal conflicts with an up-to-date development plan permission should not usually be granted.
41. The material considerations in this case which weigh in favour of the grant of permission are the provision of housing, especially affordable housing, along with the very limited benefit of some other elements included in the obligation. However these matters taken together do not come close to outweighing the policy and landscape harms. The fact that the site is agreed to be in a sustainable location in relation to the provision of facilities and related to accessibility is welcomed, but this is essentially neutral in the planning balance and could be repeated in other sites within and close to the settlement.
42. For the reasons given above I conclude that the appeal should be dismissed.

*P. J. G. Ware*

Inspector

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:	
Mr C Banner QC and Mr M Henderson of Counsel	Instructed by the Head of Legal Services
They called	
Mr W Blackledge BA DIPLA CMLI	Managing Director, 2B Landscape Consultancy Ltd
Mr O Robinson MA MRTPI	Principal Planning Officer
Ms S Hunt BA(Hons) MA MRTPI	Planning (Development Management)

FOR THE APPELLANT:	
Mr A Williamson	Consultant, Walker Morris solicitors, instructed by Mr G Whiteford (Walker Morris)
He called	
Mr M Steel BA DipLD CMLI	Mark Steele Consultants Ltd
Mr R Boulton BSc (Hons) MRTPI	Senior Director, DLP Planning Ltd
Mr S Sadler BA(Hons) TP MRTPI	Head of Planning, Walker Morris Planning Consultancy

## DOCUMENTS

1	Appeal at Bures Hamlet (APP/Z1510/W/18/3207509)
2	Appeal at Ginton (APP/J0540/W/18/3204584)
3	Landscape context plan
4	Timetable for the preparation of Development Plan Documents
5	Appeal at Station Road, Hutton Cranswick (APP/E2001/W/18/3218477)
6	Consultation on Annual Position Statement 2018 draft methodology
7	Closing statement on behalf of the Council
8	Closing statement on behalf of the appellant
9	Planning Obligation dated 12 April 2019