



Appeal Decision

Site visit made on 3 April 2018

by **Graham Wyatt BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th May 2018

Appeal Ref: APP/F2605/W/18/3194045

Land North of Norwich Road, Yaxham, Norfolk NR19 1RS

- 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 Glavenhill Strategic Land (Number 9) Ltd against the decision of Breckland District Council.
 - The application Ref 3PL/2016/1499/O, dated 13 December 2016, was refused by notice dated 5 September 2017.
 - The development proposed is the erection of 25 dwellings with new access point and associated landscaping, open space and car parking.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 25 dwellings with new access point and associated landscaping, open space and car parking at Land North of Norwich Road, Yaxham NR19 1RS. Permission is granted in accordance with the terms of the application, Ref 3PL/2016/1499/O, dated 13 December 2016, subject to the conditions on the attached schedule.

Procedural Matters

2. The planning application was outline with only access for consideration. Although a layout has been provided I have treated this as illustrative for the purposes of this appeal.
3. A planning obligation for the provision of affordable housing, on-site open space and contributions towards libraries and green infrastructure, was submitted during the appeal under section 106 of the Town and Country Planning Act 1990 (the Act). The obligation seeks to address the issues identified in the Council's reason for refusal No. 2. I deal with the contents of this below.
4. Reference has been made to the emerging Breckland District Council Local Plan 2011-2036, which has yet to complete its examination. Thus, having regard to paragraph 216 of the National Planning Policy Framework (the Framework), the policies contained within the emerging plan can be given only limited weight and they have not had any significant bearing on my determination of the appeal.
5. A number of local residents have requested that this appeal should be decided through a local hearing where they can voice their objections to the proposed development. While I have carefully considered this request, I am nevertheless satisfied that written representations is a suitable procedure for this appeal and all matters that have been raised have been taken into account.

Housing Land Supply and Planning Policy

6. The Council confirm that they cannot currently demonstrate a five year supply of deliverable housing sites. A recent decision¹ (the recent decision) which also considered previous appeal decisions, equates the current supply to be some 4.6 years. In such circumstances, paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date. Consequently, the approach set out at paragraph 14 of the Framework should be taken which tells us that for decision taking this means granting permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies within the Framework taken as a whole. Thus, the policies for the supply of housing within the Breckland Council Core Strategy and Development Control Development Plan Document 2001-2026 Adopted December 2009 (the Core Strategy) would be deemed to be out-of-date.
7. The Yaxham Neighbourhood Plan (the YNP) was made on 22 June 2017 and forms part of the development plan. A Written Ministerial Statement² (WMS) sets out how planning applications and appeals should be determined in circumstances where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, yet there is a neighbourhood plan in force. The WMS applies three criteria and where all are met, a neighbourhood plan should not be considered out-of-date, despite the Council's five year housing land supply position. However, as the YNP does not allocate sites for housing, it would not comply with all three criteria as required by the WMS and although only made in June 2017, its policies for the supply of housing are deemed to be out-of-date in accordance with paragraph 49 of the Framework.
8. Reference has also been made to the level of under supply of housing which, at 4.6 years is considered very close to the 5 years required. However, as the recent decision commented, depending on which method of calculation is used, the shortfall could be as low as 4.0 years of housing land supply. The figure of 4.6 years was used, "simply as a benchmark...as it represents what might be described as the best case scenario from the Council's perspective³". Nevertheless, even using 4.6 years, plus either a 10% or 20% buffer as required by paragraph 47 of the Framework, this still represents a significant shortfall in housing land supply.

Main Issue

9. The main issue is whether the adverse impacts of the proposal, having particular regard to the character and appearance of the area, would significantly and demonstrably outweigh its benefits.

Reasons

Character and Appearance

10. The appeal site is a roughly rectangular parcel of land which measures some 1.3 hectares and is part of a larger field. The site lies on the northern side of Norwich Road and contains a single tree to the middle of the site and is otherwise bounded mainly by hedging. The parish of Yaxham is split into three

¹ APP/F2605/W/17/3185918 dated 6 March 2018

² Neighbourhood Planning: Written Ministerial Statement dated 12 December 2016.

³ Footnote 2 of APP/F2605/W/17/3185918 dated 6 March 2018

areas, comprising the village of Yaxham and the two hamlets of Clint Green and Brakefield Green. Yaxham and Clint Green are separated by mainly open fields for a distance of some 900m. The area is rural in character and contains a variety of size and types of dwellings. The appeal site itself is surrounded by open fields to the north, south and east and abuts existing residential development to the west. Development to the west of the site faces onto, and creates a linear development along, Norwich Road. Further west St. Peter's Close turns northwards and forms an in depth development that sits behind Norwich Road.

11. The site is not statutorily protected, such as an Area of Outstanding Natural Beauty or Green Belt, nor is it locally protected as an area of landscape value. However, the Breckland Landscape Character Assessment 2007 (BLCA) identifies the site as being within an area known as the "River Wensum and Tud Settled Tributary Farmland" the key characteristics of which is defined by, amongst other things, arable agriculture representing the dominant land use, with the settlement pattern characterised by frequent dispersed farmsteads and hamlets. Larger villages are clustered around the rural road network in both a linear (Clint Green) and nucleated (Gressenhall) settlement pattern. Development considerations within the BCLA are to monitor development and boundary treatments to the settlement edges, resisting any materials and/or species which could have an urbanising influence on the landscape.
12. The appeal site provides a clear rural buffer to the built up area of Yaxham to the west and forms part of the gently undulating landscape of fields bounded by hedgerows. The site contributes towards the openness and rural character that surrounds Yaxham. Consequently, a development of 25 houses would undoubtedly erode the openness at this part of Yaxham and would extend the built development eastwards into the countryside which would have an urbanising influence on the rural landscape.
13. The illustrative layout shows how the housing could be accommodated within the site. The access would require the removal of a section of hedging with opportunity for additional landscaping to the front of the site to maintain a visual break between buildings and the road. This would be a matter for future consideration by the Council. While I also acknowledge the Council's concerns that the development details a scheme that is deeper than the houses along Norwich Road, it is nonetheless an illustrative drawing with layout for future consideration. That said, the illustrative drawing does present a frontage development that follows the existing linear development at this part of the village.
14. While it is inevitable that environmental harm would arise from a development within the countryside, the proposal would be seen against the backdrop of existing development on Norwich Road and St. Peter's Close. Moreover, at a density of some 19 dwellings per hectare it would be in keeping with the low density housing in the area and the illustrative plans show large areas of the site undeveloped, allowing the opportunity for open spaces and planting which would minimise its impact on the landscape.
15. Having regard to the above, I therefore conclude that there would be some moderate harm to the character and appearance of the area. As such, the development would be in conflict with Policy CP11 of Core Strategy, Policy HOU6 of the YNP and the Framework which seek, amongst other things, to

ensure that development proposals do not adversely impact on the essentially rural character and appearance of the area and seeks to protect the landscape of the District for its own sake.

Planning obligations

16. A planning obligation may only constitute a reason for granting planning permission if it would be necessary, directly related to the development and fairly and reasonably related to it in scale and kind. The Council and Norfolk County Council (NCC) have entered into the agreement and none of the planning obligations contained within the agreement appear to be in dispute. While NCC has provided a statement of Community Infrastructure Levy Regulations 2010 (CIL) compliance, I have nonetheless considered them against the tests in Regulation 122 and 123 of the CIL and the Framework.
17. The Council initially requested a contribution towards education facilities at Yaxham CE VA Primary School. However, NCC reassessed the school and confirms that it currently has spare capacity. As such, a financial contribution towards education is no longer required.
18. The first obligation deals with the provision of 40% of the development as affordable housing. This sets out the definitions by type and allocation arrangements of the affordable housing, including eligible household criteria. This is consistent with the requirements of Policies CP5 and DC4 of the Core Strategy and the Norfolk County Council Planning Obligations Standards April 2017 (the POS). The second obligation deals with the management and retention of on-site open space. This sets out a notification process for the chosen management arrangements of the on-site open space and restricts the use of the land for public recreation and amenity. This is consistent with the requirements of Policies CP5 and DC11 of the Core Strategy and the POS.
19. The third and fourth obligations deal with libraries and green infrastructure. NCC have identified that the development would place increased pressure on the existing mobile library that serves the village. The obligation requires a contribution of £75 per dwelling which would be used to increase the equipment and stock for the mobile library. The developer is also obliged to contribute £120 per dwelling towards green infrastructure. NCC require the development to create a physical connection to the local Public Right of Way network to the north (Yaxham Footpath 4) which is part of the Yaxham Circular Walk, which would integrate the development with the existing green infrastructure and Public Rights of Way network. This would also provide an alternative pedestrian access to local amenities such as the Village Hall and Jubilee Park. I find these obligations to be reasonably related in scale and kind to the needs generated by the proposed development and consistent with Policies CP5 and CP6 of the Core Strategy and the POS.
20. I therefore consider that the obligations meet the necessary tests in law and I have taken account of them in reaching my decision.

Other Matters

21. There would be a conflict with the YNP and I acknowledge that the preparation and making of the YNP has required local residents to engage fully with the planning process. Moreover, there is a suggestion that allowing this appeal could undermine neighbourhood planning. However, it remains from the

Council's evidence that it cannot demonstrate a five year supply of deliverable housing, which, in line with the Framework and the WMS referred to earlier, renders the policies within the YNP for the supply of housing out-of-date for the purposes of this appeal. Moreover, as I have made clear in my decision, in this particular case, the adverse impacts of the development are clearly outweighed by the benefits of the development.

22. In addition, paragraph 59 of the Hopkins⁴ judgement made it clear that the important issue is not whether particular policies should be categorised as "policies for the supply of housing" but whether the result is a five-year supply of housing land in accordance with the objectives of paragraph 47 of the Framework. Specifically, the judgement states, "If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14".
23. Policy STR1 of the YNP seeks to, "direct development in such ways to respect and retain the generally open and undeveloped nature of gaps between settlements". Moreover, in accepting that the Examiner of the YNP recognised the value of maintaining the separate identity of Clint Green and Yaxham, he did not find, "the expression of this aspiration in a policy unduly restrictive in terms of the presumption in favour of sustainable development...as it need not to preclude all development between the two settlements". Furthermore, the harm to the character and appearance of the area is clearly outweighed by the benefits of the development.
24. While I note that permission has already been granted for an additional 52 dwellings in Yaxham and that this development would provide a further 25 dwellings, on the basis of the information before me from the Council, Yaxham CE VA Primary School currently has spare capacity for additional children and no objection has been made on this basis. Moreover, I have not seen any substantive evidence or consultation responses to demonstrate that services, such as dentists and doctors, could not cope with the additional demands of 25 dwellings.
25. The fact that the appellant owns additional land within the village is not material to the determination of this appeal as each case is considered on its own merits. While the plans indicate a block of flats, scale, layout and appearance of the development are reserved and would be a matter for future consideration by the Council.
26. I note that the Council did not object to the development on highway safety grounds. From my own observations, the proposed access would provide adequate visibility splays to ensure that cars can enter and exit the site safely. With regard to flooding and drainage, the Environment Agency, Anglian Water and the Local Lead Flood Authority do not raise any objection to the development, subject to a condition securing a surface water drainage strategy and foul water disposal. I also note Natural England did not object to the development and a Preliminary Ecological Appraisal makes recommendations for habitat enhancements at the site.

⁴ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37

27. Paragraphs 7 and 8 of the Framework states that the three dimensions of sustainable development are economic, social and environmental which should not be considered in isolation. The construction of 25 dwellings would assist the local economy during the construction and subsequent maintenance of the dwellings. The occupants of the dwellings would also support local services, which, from the likely number, could be significant.
28. A social benefit would also result through the enhancement and maintenance of local services to support strong, vibrant and healthy communities by providing a supply of housing required to meet the needs of present and future generations. The provision of 25 houses would boost the supply of much needed housing in the District. Although the exact type and tenure have yet to be agreed, the planning obligation secures 40% of dwellings as affordable homes which would also make a valuable contribution to local housing needs. Moreover, the land is available now and the appellant confirms that as a small site it can be delivered in the short term, which weighs in its favour.
29. While Yaxham is not identified as a Local Service Centre or a settlement for sustaining consequential growth, the site would have access to the moderate range of services and facilities within Yaxham, such as a primary school, shop⁵ and community facilities like the village hall and children's play area. There is also a bus service available to residents from Yaxham to Dereham, which is some 4km north of the appeal site. Therefore, while car journeys are likely to be made to access the facilities and services at Dereham, the same as current residents of Yaxham would do, these trips would only be for a short distance.

The Planning Balance

30. In forming my own view on Policy CP11 of the Core Strategy, I agree with the Inspector who considered the recent decision that it is in part more restrictive than the Framework which no longer requires the countryside to be protected for its own sake. Thus, in accordance with paragraph 215 of the Framework, I afford Policy CP11 limited weight in my decision.
31. I have found that the proposed development would be contrary to Policy CP11 of the Core Strategy and Policy HOU6 of the YNP in that it would result in moderate harm to the rural character and appearance of the area. Balanced against this is the contribution to the supply of housing of up to 25 new homes with 40% of those affordable, which would also be delivered in the short term, to which I have given significant weight.
32. Taking everything into account including all other material considerations, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole. Furthermore, I have found that paragraphs 49 and 14 of the Framework apply here and in that context the presumption in favour of sustainable development is a material consideration which warrants a decision other than in accordance with the development plan

Conditions

33. The conditions suggested by the Council have been considered in light of the advice contained within the National Planning Practice Guidance and the

⁵ Although not currently open, the shop is being refurbished and will again provide a retail offer once complete.

Framework. I have amended their wording where required, or have combined or separated others, in the interests of clarity. In addition to the outline implementation conditions, it is necessary for certainty, to define the plans with which the scheme should accord.

34. To minimise the risk from contamination for future occupiers of the land it is necessary for a contaminated land assessment to be carried out prior to the commencement of the development. This will include details of any remediation necessary and action required should further contamination be found during construction. Further, to minimise the risk to biodiversity it is necessary to apply a condition in relation to habitat enhancement in accordance with the submitted Preliminary Ecological Appraisal dated August 2016. It is also necessary to control and agree details of methods of construction and external lighting in the interests of local residents.
35. In the interests of highway and pedestrian safety it is necessary to ensure the construction of the access arrangements prior to the commencement of the development and that the visibility splays are provided and thereafter retained free from obstruction. Details of parking, loading and turning areas, the extension of the 30mph speed limit beyond the site and details of the footpath along the site frontage are also required.
36. To minimise flooding, it is necessary for details of surface water and foul water drainage to be agreed with the local planning authority. In the interest of public safety it is necessary for details of the provision of fire hydrants within the site.
37. It is not necessary to apply a condition in relation to landscaping as this matter is reserved for future consideration.

Conclusion

38. For the reasons given above, and having regard to the development plan when read as a whole and the other material considerations, particularly the Framework, I conclude that the appeal should be allowed.

Graham Wyatt

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 121216/01, 001, 101, 0505/002 and 103 but only in respect of those matters not reserved for later approval.
- 5) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority, before the development is occupied.

- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. detailed proposals for the removal of asbestos from existing buildings to be demolished
 - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works.
 - ix) hours of operation during construction
- 9) No development shall take place until full details (in the form of scaled plans and /or written specifications) have been submitted to and approved in writing by the local planning authority in consultation with the highway authority to illustrate the following:
 - i) Roads, footways, cycleways
 - ii) Roads and footway, including a 2.0m footpath along the sites frontage with the roadway
 - iii) Visibility splays, as detailed on drawing number 0505/002
 - iv) Access arrangements, including details of an alternative agricultural access
 - v) Parking provision in accordance with adopted standard
 - vi) Loading and turning areas
 - vii) Details of the extension of the 30mph speed limit to beyond the site.

The development shall be carried out in accordance with the approved details and completed prior to first occupation of the development hereby permitted.

- 10) No development shall take place until an Ecological Impact Assessment and further surveys as required by the submitted Preliminary Ecological Appraisal (Aspect Ecology, August 2016) shall be submitted to and approved in writing by the local planning authority. This should detail an Ecological Impact Assessment as well as measures to be agreed with the applicant to avoid impacts to biodiversity, and provide avoidance, mitigation and, if necessary as a last resort, compensatory measures for

any loss of, or impacts to, biodiversity. The recommendations shall be implemented prior to the occupation of the development.

- 11) Prior to the commencement of any works above slab level precise details of the means of surface water disposal and means of foul water disposal shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the development has been carried out in accordance with the approved details and shall be retained thereafter in their approved form.
- 12) Prior to the commencement of any works above slab level a scheme shall be submitted to and approved in writing by the local planning authority for the provision of fire hydrants (served by mains water supply) serving the development. No dwelling shall be occupied until the fire hydrant(s) have been provided in accordance with the scheme as approved and retained thereafter in their approved form.
- 13) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the buildings are occupied. The details shall include a lighting plan indicating luminance levels both on the site and beyond, and a schedule of equipment including mounting heights. Such lighting shall be kept to the minimum necessary for the purposes of security and site safety and shall prevent upward and outward light radiation. No dwelling shall be occupied until the development has carried out in accordance with the approved details and shall be retained thereafter in their approved form.

---End of Conditions---