



## Appeal Decision

Hearing Held on 18 July 2018

Site visit made on 18 July 2018

**by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 August 2018**

**Appeal Ref: APP /E2734/W/17/3181652**

**Flats House, Scarah Lane, Burton Leonard HG3 3RS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Jonathan Raistrick (Loxley Homes Ltd) against the decision of Harrogate Borough Council.
- The application Ref 16/01869/FULMAJ, dated 6 May 2016, was refused by notice dated 6 July 2016.
- The development proposed is described as residential development (Use Class C3) comprised of 24 open-market dwellings and 16 affordable dwellings on land to the East of Scarah Lane, Burton Leonard.

### Decision

1. The appeal is allowed and planning permission is granted for proposed residential development (Use Class C3) comprised of 19 open-market dwellings and 12 affordable dwellings on land to the East of Scarah Lane, Burton Leonard at Flats House, Scarah Lane, Burton Leonard HG3 3RS in accordance with the terms of application Ref 16/01869/FULMAJ, dated 6 May 2016, subject to the attached schedule of conditions.

### Procedural Matters

2. During the consideration of the application by the Council the proposed number of residential units was reduced to 19 open-market dwellings and 12 affordable dwellings (31 in total). Consequently, the Council amended the description of the proposed development to 'proposed residential development (Use Class C3) comprised of 19 open-market dwellings and 12 affordable dwellings on land to the East of Scarah Lane, Burton Leonard'. I have determined this appeal on the basis of the revised quantum of development considered by the Council and the amended description which accurately reflects the development proposed.
3. Since the date of the Hearing the Government published on 24 July 2018 a revision to the National Planning Policy Framework (the revised Framework). The policies in the revised Framework are material considerations which are required to be taken into account in dealing with applications and appeals from the day of its publication. Both main parties and the Parish Council have provided additional evidence in respect of the revised Framework. I have therefore taken into account the additional submitted evidence and the guidance provided in the revised Framework in the determination of this appeal.

## **Main Issue**

4. The main issue is the effect of the proposed development on the character and appearance of the surrounding area and the setting of the village.

## **Reasons**

### *Background and policy context*

5. The development plan comprises the Harrogate District Core Strategy (2009) (Core Strategy) and the saved policies of the Harrogate Local Plan (2001) Incorporating the Selective Alteration (2004) (Local Plan). Both main parties agree within the submitted Statement of Common Ground (SoCG) that the Local Plan Proposals Map indicates that the appeal site is located outside, albeit it abuts, the development limit of Burton Leonard. The site is therefore within an area that is regarded as open countryside for planning purposes.
6. The Vision of the Core Strategy, amongst other things, is that the District's villages and countryside will accommodate more homes for local people at affordable prices, particularly in those settlements with the best range of services and access to jobs, shops, and community facilities by public transport, foot and bicycle.
7. Although not referred to within the Council's decision notice, the SoCG makes reference to Core Strategy Policies SG1 and SG2. Policy SG2 provides a settlement hierarchy for the District. Burton Leonard is included within Group B settlements which are identified as being settlements which will maintain their roles as local rural centres providing the focus for new housing in rural areas of the District.
8. Policy SG1 indicates that the villages and countryside of the District will accommodate around 21.5% of all new housing. Although this policy indicates that priority will be given to the re-use of previously developed land, it also recognises that the scale of housing required in the District will necessitate greenfield release focused around settlements with the best access to jobs, shops and services that are well related to the form, function and character of the settlement concerned.
9. The appellant has also referred to Policy SG3 which treats all land beyond the development limits of SG2 settlements as countryside where development is to be restricted. As a consequence of its countryside location the proposal would conflict with the provisions of policy SG3.
10. Part of the appeal site was proposed as a draft housing allocation for 40 dwellings within the Draft Sites and Policies Development Plan Document. The summary evidence base supporting the draft allocation considered landscape impact and stated that development would have 'moderate adverse effect' and with 'some adverse effects but could be mitigated'. The site was rated 'amber' which was defined as 'development will impact on the historic environment and/or local character, but appropriate mitigation measures should enable some development to be acceptable'.
11. This plan was withdrawn during the course of examination and therefore the draft allocation at the time carries no weight. However, the landscape evidence base at the time demonstrates that development on part of the

appeal site at that time would cause moderate adverse landscape effects but some of which could be mitigated.

12. I agree with the appellant that Policies SG1, 2 and 3 operate together in a scenario in which it was envisaged that the Draft Sites and Policies Development Plan Document would set settlement limits for SG2 settlements and that once such limits had been set SG3 would restrain development beyond them. In the event, no allocations or similar Development Plan Document have been taken through to adoption and so no new settlement limits have been mapped. Settlement limits do exist, but they go back to the 2001 Local Plan (and possibly before) and they relate to a different policy framework and significantly smaller housing requirement figure. Therefore, under the terms of the current development plan, I also agree with the appellant that there will be some inevitability that Group B settlements will experience expansion of their built up areas into greenfield areas as envisaged in Policy SG1, with consequential visual and landscape effects.
13. The publication version of the Harrogate Borough Draft Local Plan 2016 was subject to public consultation earlier this year. This emerging plan identifies the appeal site as remaining within the countryside, albeit the appellant is seeking to promote the site as a housing allocation. The emerging plan suggests the allocation of a haulage yard within the village for residential development. The proposed settlement hierarchy within this draft plan identifies Burton Leonard as a secondary service village and Policy GS2 states that such settlements will accommodate allocations of land for new homes. Although I consider that little weight can be attached to the policies within this emerging plan, it nevertheless demonstrates that the Council continue to see Burton Leonard as a village that can accommodate a degree of housing growth.
14. I have no evidence to suggest that there has been any change to the character or appearance of the surrounding landscape since the date the Draft Sites and Policies Development Plan Document was withdrawn. However, the site was re-assessed in terms of its landscape sensitivity as part of the emerging local plan process. This identified the site as having a medium to high sensitivity rating with very limited capacity to accommodate residential development with few, if any, opportunities for appropriate mitigation.
15. The Council acknowledges that it is unable to demonstrate a five year supply of deliverable housing sites. The submitted evidence suggests that over the last 13 years the Council has only managed to deliver the requirement in 3 years, the last of these being in 2007/08. Although showing some signs of improvement, the current supply is 4.3 years.
16. The appellant indicates that the Council's Housing Officer suggests that 270 affordable rented homes are required in the Ripon South Area which includes the settlement of Burton Leonard. This does not include those seeking shared ownership affordable accommodation for which there is a District-wide requirement of almost 600 dwellings. I have no reason to dispute the appellant's view that to deliver the 270 affordable homes in the Ripon South Area would require approval of approximately 675 market dwellings based on the Council's existing affordable housing policies. In addition to the need for market dwellings to contribute to the shortfall in housing supply, based on the evidence provided, there is a significant need for affordable housing in this part of the District.

17. Paragraph 11 of the revised Framework requires that decisions should apply a presumption in favour of sustainable development. Paragraph 11b states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Footnote 7 of the revised Framework advises that policies which may be considered to be out-of-date in relation to applications involving the provision of housing include situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73).
18. Therefore, in this case the presumption in favour of sustainable development as set out in paragraph 11 of the revised Framework is applicable unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
19. The evidence provided by the appellant indicates that in the last 13 years the Council has only managed to deliver the housing requirement in 3 years and there is a considerable deficit in the amount of affordable housing provision relative to the identified need. In this case the new dwellings proposed would make a significant contribution to the supply of market and affordable homes in a location adjoining a settlement that is identified in the Core Strategy as a focus for housing in the rural area of the District.
20. Sustainable development is identified as having 3 dimensions in paragraph 8 of the revised Framework: economic, social and environmental. In terms of the economic role of sustainability, the scheme would provide employment opportunities during its construction. The intended future occupiers would be likely to support local services and facilities.
21. The social role of sustainability includes providing the supply of housing required to meet the needs of present and future generations. The provision of both market and affordable housing on the site would be a significant social benefit in support of the scheme. The SoCG confirms that the Council consider that the location of the site is sustainable given its relationship to services and facilities in the village. From my observations, I have no reason to disagree. There are some public transport opportunities within the vicinity of the site, and nearby services that the intended future occupiers of the new dwellings could walk or cycle to. This would comply with both the social and environmental roles of sustainability.
22. However, the environmental role of sustainability includes protecting and enhancing our natural, built and historic environment and this matter is considered below as the main issue in this appeal.

#### *Character and appearance*

23. The reason for refusal does not identify the specific limbs of SG4 that the Council has relied upon. However, the Council confirmed that it has no objections to the overall density, layout, and design of the proposed residential development but that the proposal would have an adverse impact upon the form and character of the settlement and the landscape character of the surrounding area.

24. The site predominantly comprises of agricultural fields in pasture use and part of the rear garden of Flats House. It is located adjacent to the southern edge of the settlement. Open countryside lies to the south west and south east. The site has a sloping topography from a high point in the north western corner to a low point on the south and eastern boundaries which are formed by relatively noticeable hedgerows.
25. The appeal site does not form part of any national or local designated landscape nor is subject to any other environmental designation. However, the Harrogate Landscape Assessment (2004) identifies the site as lying within Landscape Assessment Area 48 – Burton Leonard and Bishop Monkton Farmland. The document identifies that development proposals beyond the village edge are likely to impact on the open landscape character of the area, which is sensitive to change, and that tree planting should be promoted on the village edge. It also identifies that development must respect the valued spatial qualities of villages outlined in their respective Conservation Area Statements. In this regard the Burton Leonard Conservation Area lies to the north of the appeal site and is separated from it by intervening residential development.
26. The proposed development would involve the construction of 12 affordable units and 19 open market units, comprising a mix of one bed units to five bedroom accommodation. A single access point would be provided onto Limekiln Lane located approximately 120 metres from the junction with Copgrove Lane. This part of Limekiln Lane would be widened to include passing places. The appellant indicates that the alignment of the access junction would restrict access via the western approach, thus discouraging access by vehicles from Sarah Lane.
27. The trees and hedgerow on the appeal site are subject to a group Tree Preservation Order. The appellant indicates that other than two groups of trees in the north western part of the site most of the existing vegetation would be retained. In particular, the existing hedgerow forming the southern, western (along Sarah Lane) and eastern boundary would be retained and supplemented by additional perimeter planting. An area of land in the south of the site would be used as an informal recreation area which would include a circular footpath around its perimeter which would be planted on each side.
28. Both main parties and the Parish Council have considered the landscape and visual impact of the proposed development based on a number of visual receptor and view reference points. The impact is identified ranging from minor to substantial with disagreement between these parties as to the magnitude of impact at the visual receptor and view reference points.
29. In that the proposal would result in a new housing scheme on undeveloped agricultural fields, the character and the appearance of the area and the setting of Burton Leonard would undoubtedly change. I have carefully considered the impact of the proposal on the character and appearance of the area from the agreed viewpoints that were considered at the site visit and I have taken into account the landscape evidence provided by the main parties and the Parish Council.
30. I do not share the appellant's view that the landscape change at year 15 will be minor. In my view the degree of landscape change will remain as moderate. However, I consider that, over time, the appeal proposal would appear as a

natural extension to the village. It would not appear to be divorced from it. I am satisfied that physically and visually, the proposal would appear to be part of the existing settlement in the long term. It would be reflective of the existing building patterns on the south side of the village which comprise of low density development with a relatively wooded context. In addition there would be adequate opportunity for internal landscaping and overtime the proposed boundary planting would provide a strongly defined and appropriate interface between the settlement and the countryside beyond.

31. In my view the proposed development overall would continue to have a moderate effect on the character and appearance of the surrounding area, particularly during the construction period in views from the south and east. This moderate effect would be particularly noticeable from the adjacent roads and Public Rights of Way. However, over time the new tree and hedge planting along the eastern and southern boundaries will mature to partly screen the new dwellings from external viewpoints and provide a strong planted context for the whole development that is consistent with the requirements of the Harrogate Landscape Assessment which requires that tree planting should be promoted on the village edge. In this regard, I consider that the proposal would provide an improved and effective interface between residential development to the north and the open countryside to the south from that which currently exists.
32. Whist I note the findings of the landscape impact re-assessment as part of the evidence base for the emerging Harrogate Borough Draft Local Plan 2016, I recognise that the assessment of Site BL1 included the possible development of the southern part of the appeal site which is proposed to be used as the dog walking/amenity area. As such, the evidence provided in this appeal suggests that a much greater area of development was assessed as part of the consideration of the development potential of site BL1 in the emerging plan than is actually proposed in this appeal.
33. Taking into account the proposed design and extent of landscaping, I consider that the proposal would respect the spatial qualities of the village. Whilst moderate harm to the character and appearance of the surrounding area would be undoubtedly caused, in my view this would not be of such significant extent to warrant the dismissal of this appeal on those grounds.
34. Although not referred to as a reason for the refusal of planning permission, the Council expressed concern at the effect of the proposal on the setting of the Burton Leonard Conservation Area. The Conservation Area Character Appraisal identifies key views looking across the site from Copgrove Lane, which will clearly be reduced as a consequence of the development. However the retention of the important eastern boundary hedge supplemented by additional planting will help filter views of the development from this vantage point. I agree with the appellant that the maturity of the proposed mitigation planting would render the impact from this receptor as minor.
35. Other than views from Copgrove Lane, owing to the local topography and the presence of intervening development, the appeal site is not readily visible from views within the Conservation Area. Although the development would be seen within the context of views of the Conservation Area from the surrounding countryside to the north east and south east, given my findings above regarding the effect of the proposal on the character and appearance of the

area I do not consider that the setting of the Conservation Area would be significantly harmed in such views.

36. I have taken into account the separation distance from the Conservation Area; the existence of intervening relatively recent development; the fact that no concerns were raised by Council regarding the proposed design, layout and materials of the proposed development and the limited impact upon the setting. These are all factors that lead me to conclude that the proposal would not cause any significant harm to the character, appearance or setting of the Conservation Area.
37. I have also considered the extent to which the site may be considered to constitute a 'valued' landscape. However, the site is influenced by the urban fringe and although it is attractive there is nothing rare, distinct or remarkable about it to establish it as 'valued' within the context of the revised Framework.
38. It is clear that the site is greatly appreciated by local residents, both those who overlook it and those who find it provides a context of open countryside when on walks on the roads and footpaths around it. It undoubtedly contributes to the experience of nearby residents and those passing and I can understand how local people draw the conclusion that the site is an important area of countryside. However, in my view, such a contribution cannot be considered to be so significant or the landscape be so rare as to make this site 'valued' in the context of the revised Framework. The Council themselves accepted that there were no perceptual aspects and associations or conservation interests that would contribute the site being defined as a 'valued' within the context of the revised Framework. Overall, I consider it not to be a 'valued' landscape.
39. In light of the foregoing, whilst the proposal would change the character of these agricultural fields and the setting of Burton Leonard, I find that the location of the site relative to the built up area of the village, and the context within which the proposal would be viewed would not be so harmful to make the scheme unacceptable. I therefore conclude that the proposal would not result in significant harm to the character and appearance of the area or the setting of the village. It would be appropriate to the form and character of the settlement and the landscape character of the area. Consequently, there would be no conflict with the objectives of Policy SG4 of the Core Strategy. Furthermore, there would be no conflict with the environmental role of sustainability as set out in the revised Framework.

#### *Other matters*

40. I have taken into account the concerns of local residents regarding the use of Limekiln Lane as the access point and in particular the narrow nature of the road with an absence of pedestrian facilities. I note that neither the Highway Authority nor the Council raised any concerns regarding the effect of the proposal in relation to highway safety. Although these matters have been carefully noted, they do not alter the main issue which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.
41. The Parish Council has expressed some concerns that the presence of Himalayan Balsam on the site may delay the completion of the development until a suitable treatment scheme has been implemented. Whilst this may be

the case, I have no evidence to suggest that the presence of this invasive species would prevent or delay the commencement of the development. The main parties agreed at the hearing that the suggested planning conditions relating to this matter were appropriate and were suitable to address the concerns of the Parish Council. Consequently, I have attached little weight to these concerns.

42. Concerns were raised regarding the capacity of the primary school to accommodate the prospective children from the proposed development. However, a completed Section 106 Agreement dated 10 January 2018 would make provision for a financial contribution towards education facilities. I have no evidence to suggest that the agreed figure contained within the Section 106 Agreement does not meet the requirements of the County Council in its role as Education Authority nor has the Council expressed any concerns regarding the impact of the proposed development on education infrastructure in its reason for the refusal of planning permission. In these circumstances, I have no basis to conclude that the proposal would cause any demonstrable detrimental impact on local education infrastructure.
43. I note the concerns raised about the effect of the proposal on drainage within the area. However, this was not included as a reason for refusal within the Council's decision notice. Both main parties agree that foul sewage from the site would be disposed of via a mains sewer, and that surface water drainage could be designed to ensure that no detriment would be caused. On the basis of the evidence before me, I consider that a suitable drainage strategy could be designed and achieved.
44. I have taken into account the fact that a planning application has been submitted for residential development comprising 23 dwellings on the Alfred Hymas Haulage Yard site within the existing settlement boundary of the village (Ref 17/00525/FULMAJ). This site is also shown as a draft allocation for residential development in the emerging publication version of the Harrogate Borough Draft Local Plan 2016. Whilst I recognise the Parish Council's view that this site may be more sustainably located than the appeal proposal, the fact remains that the emerging plan at this stage can be afford little weight and I have no evidence to suggest that the application on the haulage yard site has been determined. In any event, whilst residential development on the haulage yard site would make a contribution to housing supply, the fact remains that the Council is still unable to demonstrate a 5 year supply. Consequently, the guidance provided in paragraph 11b of the revised Framework remains relevant and I am obliged to determine the appeal proposal on its individual planning merits.
45. Both main parties have drawn my attention to other planning and appeal decisions within the District for residential development outside of settlement limits. Whilst these demonstrate a varied approach to the consideration of proposals outside development limits, I do not have full details of the nature of the proposals or the circumstances and material considerations that were relevant to their determination. Consequently, I cannot be sure that these are wholly representative of the circumstance in this appeal and, in any case, I have determined this appeal on its own merits.

## **Planning Obligations**

46. The submitted Section 106 Agreement dated 10 January 2018 would make provision for affordable housing, a commuted sum for off-site open space provision, a contribution towards education provision, a contribution towards a village hall and the provision of a management plan for the on-site open space. In addition, the appellant has provided a planning obligation dated 10 July 2018 which provides for the planting, retention of the planted area and maintenance of the proposed 4.5m wide landscape strip adjacent to the existing hedgerow forming the eastern boundary of the site. I am obliged to consider whether such provisions would accord with paragraph 56 of the revised Framework and whether the statutory tests set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 would be met.
47. The scheme provides for 12 affordable housing units comprising a mix of one, two and three bedroom accommodation. The number of units represents 40% of the overall housing total on the site and as such would meet the requirements of Saved Policy H5 of the Local Plan regarding the provision of affordable housing. The provision of an agreed contribution towards education provision and a village hall would offset the impact of the proposed development on education and community infrastructure.
48. Provision would also be made for an area of amenity space within the site to be used as public open space. The Council has not raised objection to this in evidence. Given that the intended future occupiers of the scheme would be likely to place a demand on public open space in the area, it is reasonable to provide a contribution towards the provision of open space within the District. The planting and maintenance of the hedgerow forming the eastern boundary of the site is integral to mitigating the landscape impact of the proposed development.
49. Although the Parish Council expressed some concerns that the planning obligation did not ensure implementation of the public open space management plan referred to in the Section 106 Agreement, I consider that Section 4.4 of the covenants adequately sets out what is required in terms of management.
50. Overall, I consider that the submitted planning obligations meet the tests set out in Regulation 122 and 123 of the Community Infrastructure Regulations 2010 and paragraph 56 of the revised Framework. I therefore find that the statutory tests are met in respect of this matter.

## **Conditions**

51. The SoCG proposes a number of planning conditions which I have considered against the advice given in paragraph 55 of the revised Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Government's Planning Practice Guidance. Where necessary I have altered or amended them in the interests of necessity, precision, conciseness or enforceability and to minimise the use of pre-commencement conditions.
52. In addition to the standard implementation condition I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interests of certainty.
53. In the interests of protecting the character and appearance of the area, I agree that conditions are necessary relating to the submission and implementation of

details of landscaping including the replacement of any trees, shrubs or plants that may die, are removed or become seriously damaged or diseased, and the protection of retained trees.

54. In order to ensure the satisfactory drainage of the site conditions are necessary requiring the submission of foul and surface water drainage details and the prevention of trees being planted within 5m of the centre line of any sewer.

55. In the interests of highway and pedestrian safety, I agree that conditions are necessary regarding the submission of the design details of the proposed access and highway works including the widening of Limekiln Lane, the provision of carriageway and footway to serve access to the individual dwellings, measures to prevent the discharge of surface water on to the highway, the provision of appropriate signage for construction and residential traffic, the provision of on-site car parking for construction staff and on-site materials storage areas.

56. The revised Framework advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. However, given the concerns of nearby residents regarding the potential for on-street car parking as a consequence of the proposed development, in this case I consider it necessary and reasonable to restrict the conversion of garages into domestic accommodation.

57. As part of the site has been formerly used as a factory, a condition requiring the submission of a survey and report regarding any possible ground contamination together with measures for any subsequent remediation is reasonable and necessary in order to ensure the safe occupation of the development. I also agree that in the interests of promoting more sustainable transport means other than by internal combustion engines, a condition requiring the provision of electric vehicle charging points in each dwelling is necessary.

58. A condition requiring the incorporation of Secured by Design is necessary in the interests of community safety and in order to reduce the fear of crime. Conditions preventing the removal of trees and shrubs during the bird breeding season and the provision of an ecological mitigation and enhancement scheme are necessary in order to protect ecology and local wildlife. A condition regarding the assessment and eradication of Himalayan Balsam is necessary in order to ensure that the site is free from any contamination from this invasive species.

### **Planning Balance and Conclusion**

59. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. National planning policy as contained within the revised Framework is also a significant material consideration.

60. Although the proposal would conflict with the spatial development strategy for the area in that the site is located within the open countryside, this strategy is not up to date by virtue of the Council not being able to demonstrate a 5 year supply of deliverable housing sites. In such circumstances, paragraph 11 of the revised Framework advises that permission should be granted unless any

adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or were specific policies in the Framework indicate development should be restricted.

61. The proposal would result in economic and social benefits. The site is located close to local services and facilities, which could be accessed by transport modes other than the private car. Subject to the implementation of landscaping which can be controlled by an appropriate planning condition, I conclude that significant harm would not result to the character or appearance of the area or the setting of the village. As such, there would be no conflict with the environmental role of sustainability in this regard.
62. The proposed development would extend the built confines of the settlement into land classified as countryside under the provisions of Core Strategy Policy SG3. However, it would make a substantial contribution towards the Councils current shortfall in housing land supply through the construction of 31 new homes to include 12 new affordable homes. This represents a benefit which carries significant weight, particularly as the site is located on the edge of a settlement that is classified as a Local Rural Centre under Core Strategy Policy SG2 and as such is expected to provide the focus of new housing growth in the rural areas of the district.
63. The proposal would not result in harm to highway safety, biodiversity interests, and in my view could be suitably drained. Subject to the contribution to education provision it would not have a demonstrable adverse effect upon the services and facilities within the area. Additional community benefit would result as a consequence of the proposed contribution towards the village hall. Taking these factors into account, I conclude that the appeal proposal would comprise sustainable development for which the revised Framework establishes a presumption in favour. Furthermore, there are no specific policies in the revised Framework which indicate that the development should be restricted.
64. Whilst I have some sympathy with the concerns of local residents, the fact remains that the Council is unable to demonstrate a five year supply of deliverable housing sites and as such the policies relevant to the supply of housing are rendered out of date. Having regard to Paragraph 11 of the revised Framework, the tilted planning balance in favour of sustainable development applies. In my view, the adverse impacts of the development would not significantly and demonstrably outweigh the benefits it would bring. The contribution that the proposal would make to housing supply in the District outweighs the conflict with the development plan that I have identified under the main issue. Having regard to s38(6) of the Planning and Compulsory Purchase Act 2004, I believe that in this case the appeal should not be determined in accordance with the development plan.
65. For the above reasons, based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

*Stephen Normington*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

David Manly QC	Counsel
Mark Eagland	Peacock & Smith
Martin Popperwell	Rosetta Landscape Design
Jonathan Raistrick	Loxley Homes

### **FOR THE LOCAL PLANNING AUTHORITY**

Richard Ward	Planning Consultant
Barry Gammon	Principal Landscape Officer

### **FOR BURTON LEONARD PARISH COUNCIL**

Richard Clarke	Arrowsmith Associates
Rosemary Mitchell	The Landscape Design Company
Philip Thornhill	Ecologist
Paul Bappoo	Burton Leonard Parish Council

### **INTERSTED PERSONS**

Jenny Unwin	Resident
Keith Townson	Burton Leonard Parish Council
Janine Finlay	Resident
Peter Navestock	Resident
John Blackhead	Resident
Vivian Revins	Resident
David Marfleet	Resident
Aileen O'Kane	Resident
Mark Snowden	Resident
Jeff Royston	Resident
Keith Thompson	Resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

Document A	Planning Officers Report for outline planning application for up to 72 dwellings with access on considered at Massey Fold, Spofforth, North Yorkshire (Ref 17/04102/OUTMAJ)
Document B	Letter from new owner of Burton Leonard Post Office.
Document C	Report prepared by Philip Thornhill regarding Himalayan Balsam.

## CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the submitted details as amended by any other conditions of this consent and the following approved plans:  
Proposed Site Plan Dwg No: SK15 Rev Y  
Location Plan  
The Darley Proposed Plans: Drawing No AH1/3-01-01  
The Darley Proposed Elevations: Drawing No AH1/3-02-01  
The Wetherby Proposed Plans: Drawing No AH2-02-01  
The Wetherby Proposed Elevations: Drawing No AH2-02-01 Rev A  
The Hunsingore Proposed Plans: Dwg No. BH32-01-01  
The Hunsingore Proposed Elevations: Dwg No. BH32-02-01  
The Dacre Proposed Plan: Dwg No. BH33-01-01  
The Dacre Proposed Elevations: Dwg No. BH33-02-01  
The Bedale Proposed Plan: Dwg No. BH40-01-01  
The Bedale Proposed Elevations: Dwg No. BH40-02-01  
The Ripon Proposed Plans: Dwg No. BH41-01-01 Rev A  
The Ripon Proposed Elevations: Dwg No. BH41-02-01 Rev A  
The Harrogate Proposed Plans: Dwg No. BH43-0101  
The Harrogate Proposed Elevations: Dwg No. BH43-02-01  
The Grassington Proposed Plans: Dwg No. BH44-01-01 Rev A  
The Grassington Proposed Elevations: Dwg No. BH44-02-01 Rev A  
The Harewood Proposed Plans: Dwg No. BH52-01-01 Rev A  
The Harewood Proposed Elevations: Dwg No. BH52-02-01 Rev A  
Landscape Plan Drawing No 2756/3/4/5 Revision A  
Drainage Strategy Option 2 – Attenuation (showing finished floor levels) : Drawing No.15368 C-51 F
- 3) Samples of the materials that are intended to be used externally in the construction of the roof and walls of the development hereby approved, shall be submitted for the written approval of the Local Planning Authority and the external walling shall not be started before any such approval. Thereafter the construction of the development shall be undertaken in accordance with the approved materials.
- 4) A detailed scheme for landscaping, including the planting of trees and or shrubs and the use of surface materials shall be submitted to the Local Planning Authority and no development shall take place until the Local Planning Authority have approved the landscaping scheme. Such scheme shall, amongst other matters, specify materials, species, tree and plant sizes, numbers and planting densities, and the timing of implementation of the scheme, including any earthworks required.
- 5) In the event of failure of any trees or shrubs, planted in accordance with any scheme approved by the Local Planning Authority, to survive for a period of five years from the date of the completion of implementation of that scheme, such trees or shrubs shall be

replaced by the developer with such live specimens of such species in such number as may be approved by the Local Planning Authority.

- 6) No works or development shall take place until full details of all proposed tree planting, and the proposed times of planting, have been approved in writing by the Local Planning Authority, and all tree planting shall be carried out in accordance with those approved details and times.
- 7) (a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (2010) (Tree Work).  
(b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.  
(c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.  
In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) above shall have effect until the expiration of two years from the completion of the development.
- 8) Before any materials are brought onto the site or any development is commenced, the developer shall erect chestnut paling or similar fencing in accordance with details previously submitted to and approved in writing by the Local Planning Authority, around the trees and shrubs to be retained as indicated on the approved plan. The developer shall maintain such fences until all development, or relevant part of the development, the subject of this permission, is completed. The level of land within the fenced area shall not be altered without the prior written consent of the Local Planning Authority.
- 9) At least one weeks notice in writing shall be given to the Local Planning Authority prior to works to the tree(s) commencing on site, to enable supervision and/or inspection by the Council's Arboricultural Officer or the Officer's representative.
- 10) The site shall be developed with separate systems of drainage for foul and surface water.
- 11) No development shall take place until a detailed design and associated management and maintenance plan of surface water

drainage for the site, including details of any balancing works and off-site works, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development and the area where discharge and/or management is proposed to occur has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage design should demonstrate that the surface water runoff generated during rainfall events up to and including the 1 in 100 years rainfall event, to include for climate change and urban creep, will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The approved drainage system shall be implemented in accordance with the approved detailed design prior to completion of the development. The scheme to be submitted shall demonstrate that the surface water drainage system(s) are designed in accordance with the standards detailed in North Yorkshire County Council SuDS Design Guidance (or any subsequent update or replacement for that document).

- 12) Discharge to any existing public sewer shall be subject to evidence being submitted to and approved by the Local Planning Authority that alternative means of discharge have been properly investigated and the reasons why they cannot be implemented. Furthermore, unless otherwise approved in writing by the Local Planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.
- 13) No new tree planting shall be permitted over or within 5.0 (five) metres either side of the centre line of the sewer which cross the site.
- 14) Unless otherwise approved in writing by the Local Planning Authority, there shall be no excavation or other ground works, except for investigative works or the depositing of material on the site, until the following drawings and details have been submitted to and approved in writing by the Local Planning Authority:
  - (1) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:
    - (a) the proposed highway layout including the highway boundary;
    - (b) dimensions of any carriageway, cycleway, footway, and verges;
    - (c) visibility splays;
    - (d) the proposed buildings and site layout, including levels;
    - (e) accesses and driveways;
    - (f) drainage and sewerage system;
    - (g) lining and signing;
    - (h) traffic calming measures;
    - (i) all types of surfacing (including tactiles), kerbing and edging.

(2) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:

- (a) the existing ground level;
- (b) the proposed road channel and centre line levels;
- (c) full details of surface water drainage proposals.

(3) Full highway construction details including:

(a) typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, accesses, cycleways and footways/footpaths;

(b) cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels;

(c) kerb and edging construction details;

(d) typical drainage construction details.

(4) Details of the method and means of surface water disposal.

(5) Details of all proposed street lighting which shall also provide for that part of the access to the development between the Limekiln Lane/Apron Lane junction and the first dwelling (Plot 31) to be designed to minimise light spillage to the surrounding area.

(6) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.

(7) Full working drawings for any structures which affect or form part of the highway network.

(8) An implementation programme for completing the works.

The development shall thereafter be carried out in full compliance with the approved drawings, details and implementation programme.

- 15) No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to base course macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.
- 16) There shall be no access or egress by any vehicles between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway together with a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details and programme.
- 17) There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority

under condition number 14. The required highway improvements shall include:

- a.) No direct vehicular access to be made on to Scarah Lane;
- b.) The implementation of the upgrading works to the Apron Lane junction with Limekiln Lane which shall be completed prior to the commencement of any development on the site;
- c.) The design and implementation of a signage scheme to cater for development traffic and residential traffic after construction. In the case of development traffic, such scheme shall be implemented prior to the commencement of development. In the case of residential traffic, such scheme shall be implemented prior to the first occupation of any dwelling;
- d.) The details of the carriageway widening of Limekiln Lane and an implementation programme for the installation of the required works shall be submitted for the written approval of the Local Planning Authority. The approved works shall be implemented in accordance with the approved details prior to the commencement of the development on the site.

18) Unless otherwise approved in writing by the Local Planning Authority, there shall be no excavation or other ground works, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works hereby permitted until full details of the following have been submitted to and approved in writing by the Local Planning Authority:

- (i) tactile paving;
- (ii) vehicular, cycle and pedestrian accesses;
- (iii) vehicular and cycle parking;
- (iv) vehicular turning arrangements;
- (v) manoeuvring arrangements;
- (vi) loading and unloading arrangements.

19) No part of the development shall be occupied until the approved vehicle access, parking, manoeuvring and turning areas approved under condition number 14 have been constructed in accordance with the approved layout drawing. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

20) No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the approved drawing. Once created these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

21) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 or any subsequent Order, the garages shall not be converted into domestic accommodation without the granting of an appropriate planning permission.

- 22) There shall be no access or egress by any vehicles between the highway and the application site until details of the precautions to be taken to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site have been submitted to and approved in writing by the Local Planning Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority. These precautions shall be made available before any excavation or depositing of material in connection with the construction commences on the site and be kept available and in full working order and used until such time as the Local Planning Authority agrees in writing to their withdrawal.
- 23) Unless approved otherwise in writing by the Local Planning Authority there shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:
  - (i) on-site parking capable of accommodating all staff and sub-contractors vehicles clear of the public highway;
  - (ii) on-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times that construction works are in operation. No vehicles associated with on-site construction works shall be parked on the public highway or outside the application site at any time.
- 24) Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until sections A to D have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until section D has been complied with in relation to that contamination.

#### A. SITE CHARACTERISATION

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:

\* human health,

- \* property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- \* adjoining land,
- \* groundwaters and surface waters
- \* ecological systems
- \* archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

#### **B. SUBMISSION OF REMEDIATION SCHEME**

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

#### **C. IMPLEMENTATION OF APPROVED REMEDIATION SCHEME**

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise approved in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

#### **D. REPORTING OF UNEXPECTED CONTAMINATION**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirement of section A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section B, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is

subject to the approval in writing of the Local Planning Authority in accordance with section C.

- 25) Prior to commencement of the development an electric vehicle infrastructure strategy and implementation plan to provide electric vehicle charging points for each dwelling shall be submitted for the written approval of the Local Planning Authority. Thereafter the development shall be carried out as approved with charging points associated with dwellings installed prior to occupation of that dwelling.
- 26) Prior to the development commencing details of how Secured by Design principles have been incorporated into the scheme shall be submitted for the written approval of the Local Planning Authority and once approved thereafter implemented prior to occupation of any of the units hereby approved.
- 27) Removal of any trees or shrubs shall not be undertaken during the main birds breeding season (March-August inclusively) unless a survey, undertaken immediately prior to the commencement of works by a suitably qualified ecologist, demonstrates that no active nests are present, that are likely to be disturbed by the works.
- 28) An updated assessment shall be undertaken of Himalayan Balsam on site and a scheme for its eradication from site shall be submitted for the written approval of the local planning authority prior to the commencement of works on site (including site preparation works, as these may also potentially spread the seeds). The development shall thereafter be undertaken in accordance with the approved scheme.
- 29) A detailed ecological mitigation and enhancement scheme for the site to include the construction phase as well as provision for its ongoing future management shall be submitted for the written approval of the local planning authority prior to the commencement of works. The scheme shall include the provision of integrated bat and swift bricks, habitat improvements through landscaping and an implementation programme. The approved scheme shall subsequently be implemented in accordance with the approved scheme and implantation programme.
- 30) The development shall be implemented in accordance with the finished floor levels set out on Topping Engineers drawing ref: 15368-C-51-F.
- 31) The public open space management plan referred to in the S106 Agreement shall provide for the maintenance of hedgerows along Limekiln Lane and Scarah Lane, where these roads abut the site, to ensure adequate screening of the development for all road users.