



Appeal Decision

Inquiry Held on 13 August 2019

Site visits made on 13 and 14 August 2019

by Y Wright BSc (Hons) DipTP MSc DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Appeal Ref: APP/C2741/W/19/3227359

North of Boroughbridge Road, South of Millfield Lane, York YO26 6QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Miller Homes Ltd against City of York Council.
 - The application Ref 14/02979/FULM, is dated 23 December 2014.
 - The development proposed is residential development, access, public open space, landscaping and associated development infrastructure.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development, access, public open space, landscaping and associated development infrastructure at land north of Boroughbridge Road, south of Millfield Lane, York YO26 6QB, in accordance with the terms of the application, Ref 14/02979/FULM, dated 23 December 2014, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Inquiry sat for 1 day and I held an accompanied site visit on 13 August 2019 and an unaccompanied visit on 14 August 2019.
3. Concerns have been raised by a neighbour as to the accuracy of the red line site boundary. The Appellant has confirmed that the site boundary on the submitted plans is accurate, but a drafting error included some of the neighbour's trees within it. This has been rectified, but does not change the red line site boundary which remains as originally submitted.
4. Whilst the description of development does not specify the amount of residential development sought, the application was originally submitted for 271 dwellings. Following discussions with Council Officers this was reduced to 266 dwellings and amended plans were submitted to the Council and a second round of public consultation occurred. A further amended layout plan was submitted during the Inquiry, but this only amends the location of the affordable housing within the proposed scheme, not the amount. No prejudice would arise from consideration of the proposal based on these amendments. Thus my decision is made on this basis.

5. The application, the subject of this appeal, was presented to the City of York Council Planning Committee on 2 July 2019 to ask members to confirm how they would have determined the application had it not been appealed against non-determination. At this meeting it was resolved that the Council's position at this Inquiry is that permission should be granted subject to appropriate conditions and the completion of a S106 agreement. The Council therefore does not resist the appeal, and therefore no Council witnesses were called to the witness table.
6. An agreed Statement of Common Ground was submitted prior to the start of the Inquiry which sets out the policy context along with the matters of agreement between the two main parties.
7. It is agreed between the Appellant and the Council that for the purposes of this appeal, the site falls within the general extent of the Green Belt, and the proposal would be inappropriate development in the Green Belt. I deal with this within my main issues below.
8. A planning obligation in the form of a dated and signed planning agreement, was received on 29 August 2019, pursuant to section 106 of the Town and Country Planning Act 1990. The main contributions are: 30% affordable housing, travellers' pitches, open space, education, sports provision, highways and sustainable transport measures. I deal with these below.
9. Whilst it has been confirmed that there is no longer any material difference in position between the two main parties, it is necessary for me to consider the issues involved, not least as a number of concerns have been raised by interested parties.

Main Issues

10. My main issues are:

- Whether or not the proposed development would represent inappropriate development in the Green Belt;
- The effect of the proposal on the openness of the Green Belt;
- The effect of the proposal on the purposes of including land in the Green Belt; and
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development in the Green Belt

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
12. The development plan relevant to this appeal comprises the retained policies and key diagram relating to the Green Belt within the Yorkshire and Humber Regional Spatial Strategy (RSS), and policies within the Upper and Nether Poppleton Neighbourhood Plan which was formally made on 19 October 2017.

The Council does not have a formally adopted local plan, though work is progressing on the emerging Local Plan.

13. Policies YH9 and Y1 of the RSS establish the principle of the York Green Belt. The RSS key diagram illustrates the general extent of the Green Belt, but it does not determine what the detailed boundaries should be. Indeed Policy Y1 states that the detailed boundaries of the Green Belt are to be defined in a City of York development plan, in accordance with RSS Policy YH9C. This latter policy states that the *'detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in this RSS and must also endure beyond the Plan period.'* All other RSS policies were revoked in 2013. The general extent of the York Green Belt has therefore been established in principle for many years although its detailed boundaries in the City of York Council area have never been formally defined.
14. In my procedural matters above, I confirmed that both the Appellant and the Council have agreed that, for the purpose of this appeal, the site should be treated as being within the general extent of the Green Belt. I am mindful that the lack of defined boundaries is insufficient justification to arbitrarily exclude sites from being within the general extent of the Green Belt. On this basis I share the view that the site is within the general extent of the Green Belt. Accordingly national and local Green Belt policy applies to this appeal.
15. The Neighbourhood Plan shows the appeal site as being within the general extent of the Green Belt, though it does not define the detailed Green Belt boundaries within its area. It recognises that these will be determined through the emerging Local Plan: *'it is for the City Planners and Councillors of the City of York to agree the definitive Green Belt around the City and surrounding villages.'* It continues by stating that once the City Council's emerging plan has been adopted, the Neighbourhood Plan *'will be reviewed in order to ensure that the two elements of the development plan are consistent'*.
16. For the purposes of this appeal Neighbourhood Plan Green Belt Policy PNP1 applies to the proposal. This states that inappropriate development within the general extent of the Green Belt will not be supported except in very special circumstances. This is consistent with national policy.
17. Whilst I note that the site was supported as a housing allocation in the submission version of the Neighbourhood Plan, this was not carried forward into the 'made' version. As such this carries no weight.
18. The Council produced the York Development Control Local Plan in 2005, which includes a Proposals Map, but this has not been adopted as policy and does not form part of the development plan. The appeal site is shown as being within the suggested Green Belt boundary on the Proposals Map. Whilst this is a material consideration, I consider it has very little weight, particularly as more recent emerging planning policy in the form of the City of York Local Plan, has been produced by the Council.
19. This emerging Local Plan was submitted for examination in May 2018 and is at an advanced stage. Within this Plan the proposed detailed boundaries of the Green Belt have been defined for the first time. It does not include the appeal site within the Green Belt. Instead the site is identified as a proposed

allocation for housing development under emerging Policy SS7 (site ST2). I consider the evidence behind the proposed detailed Green Belt boundaries and the weight to be attached to this Plan later in my decision under 'Other considerations'.

20. The National Planning Policy Framework (the Framework) attaches great importance to the Green Belt. Paragraph 133 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belt are its openness and permanence.
21. The Framework goes on to state that inappropriate development within the Green Belt, is by definition harmful and should not be approved except in very special circumstances. Except for a small number of exceptions set out in paragraphs 145 and 146 of the Framework, development within the Green Belt should be regarded as inappropriate. The proposed development does not fit into any of the exceptions listed, and I therefore conclude that it would represent inappropriate development in the Green Belt.

Openness of the Green Belt

22. The appeal site comprises an L-shaped agricultural field currently in use for growing crops and a former sports ground for the Civil Service Sports Council, which is now overgrown and unused. On my site visit I saw some evidence of the foundations and surfaces of sports related structures and parking areas that used to be located on part of the site, but no buildings remain. Whilst I acknowledge that the site is surrounded by existing urban development, the site itself is clearly currently open in character.
23. The proposal would result in the introduction of residential development onto this open site, which would result in a considerable reduction in its openness. Whilst I accept that the vegetation cover along the site boundary and the additional proposed landscaping would restrict some views of the development, there would inevitably be a permanent change to the character of the site, which would spatially and visually be perceived to some extent, by users of adjacent highways, footpaths and occupiers of adjacent buildings.
24. Due to the scale of the proposed development relative to the existing openness of the appeal site, I conclude that there would be a considerable loss of openness. This would be additional to the harm by reason of its inappropriateness, and in accordance with paragraph 144 of the Framework, together carries substantial weight against the proposal.

Purposes of including land in the Green Belt

25. Paragraph 134 of the Framework states that Green Belt serves five purposes. I now consider what effect the proposed development would have on these purposes.
26. The first and second Framework purposes are '*to check the unrestricted sprawl of large built-up areas*' and '*to prevent neighbouring towns merging into one another*'. The site is mostly surrounded by existing built form. This includes the Manor Academy school, established residential development and the outer ring road to the west, mixed commercial development to the north, a large previously developed site with planning permission for a substantial number of houses to the north east, existing housing to the east and the A59

- Boroughbridge Road to the south. There is an open field beyond this road to the south.
27. The proposal would introduce built form on to the currently open site, which would increase the amount of development in the area. Whilst this would result in the considerable reduction in the openness of the site, the proposal would not extend development beyond the existing urban form that surrounds the site. Accordingly it would not visually or physically extend development towards nearby settlements, including Upper and Nether Poppleton.
28. Furthermore the appeal site is not located in any of the areas identified as being essential for preventing coalescence between settlements, as evidenced in the Neighbourhood Plan and supporting documents to the emerging Local Plan. The proposal therefore would not result in the unrestricted sprawl of a large built-up area nor the merging of any settlements.
29. The third Green Belt purpose is '*to assist in safeguarding the countryside from encroachment*'. Whilst the site is partially agricultural, it is separated from nearby countryside by the outer ring road, A59 and existing built form. This existing development serves to contain the appeal site and isolate it from the wider countryside. In visual terms, views of the site from the A59 and outer ring road are currently limited, due to the existing mature trees, hedgerows and intervening development. Whilst the reduction in height of some of this vegetation has the potential to improve some views into and across the site, it would still be seen within the context of the surrounding built up area and would remain separated from the countryside. Within this context the site does not visually or spatially form part of the nearby countryside. Therefore, whilst the appeal scheme would result in urban form extending on to the site, it would not, in my view, encroach into the countryside.
30. The fourth Green Belt purpose is '*to preserve the setting and special character of historic towns*'. On my site visit I saw no views of the historic core of the City, including the Minster, from within or across the site or when viewing the site from the adjacent roads. The heritage evidence submitted includes heritage assessments, undertaken as part of the process of producing the emerging Local Plan. These do not identify the site as being of particular importance to York's historic character or its setting. The development proposal would inevitably change the character of the site, but it would be seen within the context of the surrounding built form and the landscaping proposed. Overall, based on the evidence submitted, I find that there would be no harm to the setting and special character of the historic city of York.
31. The final purpose is '*to assist in urban regeneration, by encouraging the recycling of derelict and other urban land*'. Substantial urban regeneration sites within the City area, including the former British Sugar site immediately to the north east and the York Central site, have both secured planning permission for development, and are progressing. Other previously developed sites in the City have also been identified as part of the emerging Local Plan process and are being positively advanced. Due to the differing site complexities, scale of development and timescales for delivery, the development of the appeal site would not adversely impact on the regeneration of these or other derelict and urban sites. As such there would be no harm to this Green Belt purpose.

32. In taking account of the above, I conclude overall, that the proposal would not result in harm to the five purposes of including land within the Green Belt. This lack of harm is a neutral factor that weighs neither for or against the proposal.

Other considerations

33. I now consider whether there are any 'other considerations' that would weigh in favour of the development.
34. I have determined above that the proposal would not result in harm to the five purposes of including land within the Green Belt. Whilst this lack of harm carries no weight, I now consider whether the site contributes to these Green Belt purposes.
35. As I have mentioned earlier in my decision, the existing adopted development plan (RSS and Neighbourhood Plan) sets out the general extent of the Green Belt, but does not determine its detailed boundaries. A detailed assessment of what land should be within the Green Belt boundaries has now been undertaken as part of the process of producing the emerging Local Plan. This evidence delineates the boundaries based on an assessment of whether land meets the essential Green Belt characteristics of openness and permanence, in accordance with the five purposes as set out in the Framework. This evidence concludes that the appeal site does not serve any Green Belt purposes.
36. Having considered this evidence and taken account of the site's location adjacent to existing built form and its self-contained nature and isolation from nearby countryside, I concur with the findings of the Green Belt review, that this site does not contribute to the five Green Belt purposes of including land within the Green Belt. Whilst I have some representations before me arguing that the site does serve a few of the Green Belt purposes, I have no substantive evidence to support these views or counter the findings of the Green Belt review. Consequently, my findings in this regard carry significant weight in favour of the proposal.
37. I note that the Local Plan is currently at examination, so is at an advanced stage. The site is not shown as being within the Green Belt in the emerging Local Plan. This, together with the identification of the site as a proposed allocation for housing development under emerging Policy SS7 (site ST2), are material considerations, though the weight to be attached is dependent on the extent to which there are unresolved objections. In this regard I note that there are four such objections relating to the site, which predominantly raise issues relating to matters that I consider could be resolved through the imposition of planning conditions or are concerns relating to the Green Belt boundary. Overall, on this basis, and taking account of my finding that the site does not serve any Green Belt purposes, I consider that in this instance the emerging Local Plan weighs moderately in support of the proposal.
38. The proposal would result in market and affordable housing which would be in an accessible location. There is a clear need for housing, with the main parties agreeing that the current housing land supply for the City of York is either 3.28 years or 3.82 years, depending on whether the emerging Local Plan allocations within the urban area are included or not. The evidence therefore shows that the Council is currently unable to demonstrate a 5 year housing land supply (5YHLS), without bringing forward sites outside the urban area.

39. The proposal before me seeks full planning permission. Based on the available evidence, a considerable proportion of the 266 dwellings proposed could be delivered in the short term, contributing to the 5YHLS shortfall. In these circumstances, as the Council does not have a 5YHLS and in light of the imperative in the Framework to boost significantly the supply of housing, this provision is a significant consideration that weighs in favour of the proposal. Whilst I am mindful of the Written Ministerial Statement of December 2015 (WMS) which indicates that unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances, this pre-dates the revised Framework. As this provision has not been translated into the Framework and the associated guidance has been removed from the Planning Practice Guidance, I give this WMS little weight as a material consideration.
40. The scheme would also boost the local economy by providing construction jobs and supporting local building trades, albeit that this would be for a temporary period. The site is located in a sustainable location, accessible to everyday local facilities and services and therefore future occupants of the development would be likely to use and support local businesses, services and facilities. These economic benefits carry some positive weight.

The development would also enable the positive and beneficial reuse of a partially vacant and underused site. Most of the existing trees and hedgerows within and on the boundary of the site would be retained, although I acknowledge that it would be necessary to remove a small number of protected trees adjacent to the A59, some of which are defective. The proposal would provide further trees, landscaping and other biodiversity features such as bird and bat boxes within the site, which would enhance biodiversity. These elements overall carry some weight in favour of the proposal.

Whether very special circumstances exist

41. Taking account of my findings as set out above, I now consider whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, either individually or cumulatively, before determining whether very special circumstances exist to justify inappropriate development.
42. The proposal would be inappropriate development in the Green Belt and would result in considerable harm to openness. In accordance with national policy this harm carries substantial weight against the proposal.
43. I have found that the proposal would not result in harm to the five purposes of the Green Belt. I have also concluded that there would be no other material harm. As such these are neutral factors that weigh neither for nor against the development.
44. In terms of matters weighing in support of the appeal, I have determined that the site does not serve any Green Belt purposes and therefore does not need to be kept permanently open for Green Belt reasons. Furthermore, the provision of 266 market and affordable homes, to be delivered in the short to medium term, is a significant favourable factor. These elements weigh significantly in support of the proposal.

45. The site is not identified as being within the Green Belt as assessed through the Council's Green Belt review evidence. I have myself concluded that the site serves none of the five Green Belt purposes, and as such this carries significant weight.
46. The appeal scheme would accord with the proposed site allocation for residential development in the emerging Local Plan. I have determined that, in this instance, taking account of the advanced stage of the emerging Local Plan and the limited outstanding objections that remain as regards the site allocation, this carries some moderate weight.
47. I have also identified some modest economic benefits and biodiversity enhancements in support of the proposal.
48. I have carefully considered and weighed all the above matters. Overall, in considering these matters in combination, I conclude that the substantial harm by reason of inappropriateness and the effect on openness would be clearly outweighed by these other considerations. I therefore conclude that very special circumstances exist to justify inappropriate development in the Green Belt.

Other matters

49. In addition to concerns raised about development on land within the general extent of the Green Belt, interested parties have also made representations on other issues.
50. In relation to highway related concerns, I note that the proposal would increase traffic in the locality to some extent. Indeed the updated transport assessment (Sanderson Associates 2017) states that the proposal would have '*some detrimental impact on existing junctions*'. However, the site is in an accessible location, with existing bus stops and services adjacent to the site, and taking into account the measures proposed within the travel plan and planning agreement, I consider that future residents and visitors to the development would have a realistic and reasonable opportunity to utilise sustainable modes of travel for meeting day to day needs. These measures would assist in reducing the reliance on the private car and would support travel by other modes of transport. The delivery of these measures could be secured by means of suitable planning conditions.
51. I also note that since the transport assessment was completed, improvements to the nearby A59/A1237 roundabout have taken place, to ease existing congestion. Furthermore the Council confirmed at the Inquiry that other local roads and junctions are due to be improved/upgraded. This includes network capacity enhancements to junctions associated with the York Central development. As a consequence of these measures, no additional mitigation is required by the Highway Authority, for highway improvements as a consequence of the appeal scheme, except for those set out within the planning agreement or through the suggested conditions. Nevertheless, to ensure that the travel plan includes targets to take account of the number of trips to be taken off the network to assist in reducing any impact on the A59 and key junctions, this measure could be imposed in a suitably worded condition. This is a reasonable approach.

52. There would be limited vehicular access from Millfield Lane as the proposed access here would only serve a few houses, and whilst there would be pedestrian and cycle access across the site, there would be no vehicular through route. Construction traffic would only be for a temporary period.
53. Overall, I am satisfied that the accessible location of the appeal site, together with the sustainable transport measures proposed, would assist in minimising the amount of car borne travel from the development. Based on the available evidence I consider that the proposal would not result in an unacceptable impact on highway safety nor would the residual cumulative impacts on the road network be severe. Furthermore the Highway Authority does not object to the proposal on highway safety or operational grounds, and having had regard to all the available evidence I have no reason to reach another conclusion.
54. The proposal would result in the loss of some Grade 2 best and most versatile (BMV) agricultural land. However, this part of the site lies adjacent to existing urban development and is isolated from other agricultural land within the locality. Furthermore, there is a significant amount of BMV land surrounding York, so the loss of such a small area would have a minimal impact. The field forms only a small part of the farmer's land holding, and its loss would not affect the viability of his wider farming business. On this basis, there would be no material harm in this regard.
55. Local residents have also suggested that the development would result in unacceptable pressure being placed on existing local services and facilities, including schools and healthcare. However there is no evidence that these facilities would not be able to cope with the level of development proposed. Indeed the Appellant proposes to provide planning contributions towards the provision of some necessary facilities and local infrastructure, including schools, as part of a legal agreement, such that the concerns on this matter could be overcome. I also note that the Council, and statutory agencies responsible for such facilities have not objected to the proposal. As there is no substantive evidence before me demonstrating harm in this regard, I have no reason to reach another conclusion.
56. Whilst concerns about prematurity have been raised, I consider the development is not so substantial or that its cumulative effect so great that it would undermine the plan making process. Furthermore the development would be consistent with its allocation for residential development in the emerging Local Plan. Whilst this is not yet an adopted plan it is at an advanced stage and in the case of this site has very few outstanding objections. I therefore do not attach weight to the issue of prematurity in this instance.
57. In relation to other issues raised, the design and density of the proposed scheme would ensure that the site would not be overdeveloped, and living conditions for occupiers of neighbouring properties and future occupiers of the development would be satisfactory, including in relation to privacy, overlooking and overshadowing. The scheme includes a landscape buffer between the school and proposed residential properties, and it is my view that its size would be adequate in this regard. The scheme would also provide sufficient distances between new and neighbouring properties to protect privacy.

58. The site is currently private land with no public right of access so there would be no loss of public open space. Indeed the proposal would provide new play areas and public open space.
59. As regards wildlife, I note that the site is supported by an ecological assessment (Ecology Report 2014) and further surveys and addendum statements carried out in 2016 and 2019. Based on the evidence that is before me, the recommended mitigation and enhancement measures proposed within these reports and the imposition of a suitable ecological condition would ensure biodiversity enhancement.
60. The scheme includes a submitted drainage strategy which would ensure adequate drainage and flood risk measures were implemented. I note that there is no objection to the drainage strategy from Yorkshire Water and the Internal Drainage Board. Based on the available evidence I have no reason to reach a different conclusion.
61. Whilst it has been suggested that the site could be used for other means such as sports fields or other recreational use or the expansion of the adjacent school, these proposals are not before me. I can only consider the appeal based on the development that has been applied for.

Planning obligations

62. The relevant parties have entered into a planning agreement under section 106 of the Town and Country Planning Act 1990, which includes a number of obligations which would come into effect if planning permission were to be granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and as set out in paragraph 56 of the Framework. These state that a planning obligation must be: necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
63. The planning agreement comprises a range of contributions that would be provided were the appeal to be allowed, which I now consider.
64. Affordable Housing: A significant need for affordable housing has been identified through the York Strategic Housing Market Assessment and its addendum. Whilst there is currently no adopted development plan policy requiring affordable housing, the delivery of 30% affordable housing would be in line with the Council's current practice. Furthermore the provision of affordable houses as part of the development would accord with the Framework which seeks to ensure a sufficient supply of homes to reflect identified needs. I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary. I give this obligation significant weight.
65. Open space and sports provision: The obligation requires the submission and implementation of a public open space and landscape management scheme, to ensure the future management and maintenance of the public open space and landscaping for the lifetime of the scheme. This would be required to meet the needs of the future residents of the scheme.
66. The off-site sports contribution of £184,671 would be used to improve/extend existing local facilities at named sites, to accommodate the additional needs of the new residents. The quantum of provision and sum requested are

consistent with the standards set out in the Council's Open Space and Green Infrastructure Update 2017. I am satisfied that these planning obligations meet all three statutory tests and so are necessary. As they would meet the needs of the future residents of the scheme, they are neutral factors that carry no weight.

67. Education: Contributions would go to local pre-school, primary and secondary schools to enable them to accommodate the additional pupils that would be generated by the appeal proposal. The contributions have been calculated in accordance with the methodology set out in the Council's Supplementary Planning Guidance for developer contributions to education facilities, as updated in June 2019 (Education SPG). The actual costs requested are based on the Department for Education cost multiplier, which is annually updated and regionally adjusted. This is a reasonable approach.
68. The evidence identifies that existing early years establishments do not have the capacity to accommodate the additional 33 places that would be directly generated by the development. The sum of £300,927 would contribute towards the provision of these additional places within the locality. This would meet the planning obligation tests and is therefore necessary.
69. In relation to primary school education, the evidence identifies that the scheme would result in the need for 63 additional spaces, which cannot currently be accommodated locally. The planning agreement specifies the requirement for a sum of £1,148,931, to be used to provide these spaces at named schools within the area, and the future school planned to be constructed on the former British Sugar development site, opposite the appeal site. This provision would be directly related to the development, would meet the other two tests and accordingly the contribution is necessary.
70. A contribution of £899,532 towards the provision of 36 secondary places at the adjacent Manor Academy School reflects the additional places that would be generated by the development proposal in accordance with the SPG calculation. This would meet the planning obligation tests and is therefore necessary.
71. As these education related obligations would meet the needs of the future residents of the scheme, they are neutral factors that carry no weight.
72. Highways and sustainable transport: The highway infrastructure and sustainable transport contributions would provide funding for membership of and access to a car club, pedestrian crossing improvements, bus priority measures, bus service improvements, new bus stops, bus passes, and a travel plan, all of which would encourage and support the use of more sustainable means of transport.
73. A contribution of £20,000 would be used towards the upgrading of a pedestrian crossing on the A59. Bus related contributions comprise the following: £120,000 for the funding of up to four bus stops on the A59 and Millfield Lane; £400,000 to increase the frequency of bus service number 10 in the evenings and on Sundays for a 5 year period; and £480,000 towards bus priority measures on the A59. A sum of £69,160 would be used to provide subsidised travel measures including bus passes and car club access. A sum of £80,000 for a travel plan for the development would reduce dependence on the private car and promote sustainable travel. The sums requested are based on similar

schemes and interventions within the area and would be proportionate to the impacts.

74. I find that these highway infrastructure and sustainable transport contributions would serve the residents of the scheme and would meet all three planning obligation tests. They are therefore necessary. As they would meet the needs of the future residents of the scheme, they are neutral factors that carry no weight.
75. Traveller pitches: The planning agreement also contains an obligation to provide a £300,000 contribution towards the provision of two off-site gypsy and traveller pitches. This would contribute towards meeting the accommodation needs for 44 gypsy and traveller households that do not meet the planning definition, as defined in emerging Policy H5 of the Local Plan. Nevertheless, there is no indication of where the pitches would be located, when they would be provided and how they would be delivered. Furthermore, such provision is not necessary to make the development acceptable in planning terms, is not directly related to the development and does not fairly and reasonably relate in scale and kind to the development. Consequently, it has not been demonstrated that this obligation is necessary. I therefore do not take it into account in determining this appeal and I accord no weight.

Conditions

76. I have considered the conditions suggested by the Council in the light of the advice given in the Planning Practice Guidance (PPG). All of the conditions are deemed to be acceptable by the Appellant, including those that are pre-commencement. Whilst I impose most of them, I do not impose those that do not meet the required tests. Conditions can only be imposed where they are necessary, relevant to planning and to the development being permitted, enforceable, precise and reasonable in all other respects. I have combined some of the conditions and amended the wording of others where necessary, in the interests of precision and enforceability. Overall, I am satisfied that the conditions set out in my decision meet the tests within the PPG and the Framework.
77. In addition to the standard time limit condition, I impose a condition specifying the approved plans for reasons of certainty. The submission and implementation of a construction method statement is necessary to minimise detrimental effects to the living conditions of neighbouring residents, to protect the natural environment from pollution and ensure highway safety during the construction phase. It also requires the inclusion of measures to avoid protected and priority species, particularly in relation to the potential for bats and badgers, in accordance with the advice in the Ecology Report (2014) and its addendums (2016 and 2019).
78. As the site contains Himalayan Balsam, I impose a condition to manage and control this invasive non-native species. A tree protection method statement is necessary to safeguard existing trees during construction. In accordance with the Ecology Report and its addendums, ecological measures are necessary to provide net gains in biodiversity as part of the development. I therefore include the suggested condition, but also add an implementation clause. In order to prevent flooding and ensure satisfactory drainage a suitably worded condition is necessary.

79. Due to the findings of the OSA 2015 archaeological assessment, I impose an archaeological condition to ensure satisfactory archaeological investigation and recording of the site.
80. Conditions requiring detailed drawings of the roads, footpaths, cycleways and other areas of open space to be adopted, together with a phasing plan detailing the timescales for implementation of the road and green infrastructure, are imposed. I also impose conditions requiring car club facilities, electric vehicle charging points and a travel plan to ensure the provision of sustainable forms of travel, though for the former I have added a suitable implementation clause. Also the Council's condition for the provision of electrical charging sockets is unnecessarily detailed, particularly in relation to the length of cable to be installed. It may be more appropriate for different cable lengths to be installed depending on the dwelling under construction. As such, I amend the condition to require a scheme to be submitted to the Council setting out the required details, to allow greater flexibility.
81. The provision of cycle parking in accordance with the approved details will protect the character and appearance of the development and promote sustainable travel. For precision and reasons of enforceability I have amended the suggested condition to require the installation of the cycle parking prior to first occupation of the dwelling to which it relates.
82. A condition requiring detailed designs of the play areas is necessary to ensure they are suitable. As agreed by the main parties at the Inquiry, I include reference to the phasing plan, to ensure that a timescale for implementation is included in the condition.
83. The Council has put forward a condition which requires the delivery of sustainable design and construction which exceeds the minimum Building Regulations standards for dwelling energy efficiency, water consumption rates and carbon emissions. The additional evidence submitted at the Inquiry in the form of the Carbon Trust report (2017) justifies these requirements. I therefore consider the condition meets the necessary tests and I impose it.
84. In relation to noise levels I note that the Appellant's noise impact assessment concludes that the dominant noise source near to the south western and eastern boundaries was due to road traffic on the A59 Boroughbridge Road and Millfield Lane, respectively, along with some noise associated with the school for a limited period of the daytime. Accordingly I impose a suitable condition which requires noise mitigation measures so that the dwellings are constructed to not exceed specified internal daytime and night time noise levels. This will minimise adverse effects on health and quality of life for future occupiers to ensure that living conditions are satisfactory.
85. A condition requiring that a survey of adjacent highways is carried out prior to the commencement of development does not meet the required tests and is therefore not necessary, as such matters can be dealt with through relevant highway legislation and regulations. I therefore do not impose it.
86. I do not impose conditions requiring ground gas monitoring, an assessment of landfill gas generation and migration, and a remedial scheme, as no evidence of such issues within or surrounding the site is before me. No evidence of the need for these provisions has been submitted. However I do impose a condition relating to any unforeseen contamination that may come to light

whilst carrying out the development, in order to protect future users of the land, existing neighbours, properties, controlled waters and ecological systems.

87. I acknowledge the requirement in the emerging Local Plan in respect of the provision of a mix of housing types to meet identified needs, but insufficient evidence has been provided in this case, to support the necessity for a condition requiring 10% wheelchair accessible/adaptable dwellings within this site. There is also insufficient evidence before me to demonstrate the need for at least 5% of the dwellings to be self-build or custom build. As such, these suggested conditions would not meet the statutory tests and I therefore do not impose them.

Conclusion

88. I have concluded above that, for this appeal, very special circumstances exist to justify inappropriate development in the Green Belt. My findings on other matters do not lead me to reach a different conclusion. Consequently, I conclude overall that the proposal would comply with the relevant provisions of the Framework and the development plan when considered as a whole. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be allowed.

Y Wright

INSPECTOR

Appearances

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Morgan of Counsel, Landmark Chambers, instructed by Ms Sandra Branigan, Senior Solicitor, City of York Council

Assisted by:

Mr David Allenby BA(Hons) MRTPI, Planning Consultant

Mrs Becky Eades, Development Management, City of York Council

FOR THE APPELLANT:

Mr Michael Bedford QC, Cornerstone Chambers, instructed by Mr Jason Tait DipTP MRTPI, Director at Planning Prospects Ltd

He called: Mr Jason Tait DipTP MRTPI, Director at Planning Prospects Ltd

Other person available: Mr Ian Ladbrooke BA(Hons) MIHT MIHE, Associate at Sanderson Associates (Consulting Engineers) Ltd

FOR INTERESTED PERSONS:

Mr David Gale	Local resident
Mr Stephen Winston	Local resident
Mrs Lynda Winston	Local resident
Councillor Ms Anne Hook	Ward member and Parish Councillor
Mrs Edie Jones	Chair of Poppleton Neighbourhood Plan Committee, Councillor of Nether Poppleton Parish Council and Governor of Manor Academy
Mr Lionel Lennox	Local resident
Mrs Maggie Johnson	Local resident
Mr Michael Wistow	Chairman of York Trenchard Group

DOCUMENTS:

- 1 Letter of notification of the Inquiry dated 12 July 2019 and list of addresses
- 2 Revised planning layout plan 0199-100-04 Rev E
- 3 Extracts from the submission version of the Poppleton Neighbourhood Plan and Parish Council minutes
- 4 Ecology Information addendum statement July 2019

- 5 Copy of Cllr Ms Anne Hook's comments made at the 2 July 2019 City of York Council Planning Committee
- 6 Photos of the site (aerial and from the adjacent school) provided by Mrs Edie Jones
- 7 Map showing the amount of agricultural land surrounding the City of York
- 8 Carbon Trust report used to assist the Council in developing the climate change section of the emerging local plan – provides evidence for some of the proposed conditions
- 9 High Court decision *Monkhill Limited v Secretary of State for Housing, Communities and Local Government and Waverley Borough Council* [2019] EWHC 1993 (Admin)
- 10 Appellant's final reply
- 11 Signed S106 planning agreement dated 29 August 2019

Richborough Estates

Schedule of Conditions

1. The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

811105-100-01 Site location plan
0199-100-01 Rev E Site layout plan
0199-100-04 Rev E Planning layout
2694-101 Landscape layout
0199-100-02 Enclosures plan
0199-100-03 Character areas plan
811105-100-20 to 811105-100-24 Street scenes

Character Area 1 House type booklet:

0199-C1-TO-01 to 0199-C1-TO-04
0199-C1-DA-01 and 0199-C1-DA-02
0199-C1-KI-01 to 0199-C1-KI-04
0199-C1-MA-01 to 0199-C1-MA-04
0199-C1-BL-01 to 0199-C1-BL-04
0199-C1-ES-01 to 0199-C1-ES-04
0199-C1-BU-01 to 0199-C1-BU-08
0199-C1-BU.DA.-01 and 0199-C1-BU.DA.-02
0199-C1-AS-01 and 0199-C1-AS-02
0199-C1-RE-01 to 0199-C1-RE-04
0199-C1-RY-01 to 0199-C1-RY-04
0199-C1-ST-01 and 0199-C1-ST-06
0199-C1-BM-01 to 0199-C1-BM-04
0199-C1-SG-01
0199-C1-DG-01

Character Area 2 House type booklet:

0199-C2-TW-01 to 0199-C2-TW-04
0199-C2-AP-01 to 0199-C2-AP-04
0199-C2-YA-01 and 0199-C2-YA-02
0199-C2-SN-01 and 0199-C2-SN-02
0199-C2-PU-01 and 0199-C2-PU-02
0199-C2-TO-01 to 0199-C2-TO-04
0199-C2-DA-01 and 0199-C2-DA-02
0199-C2-DA.DA-01 and 0199-C2-DA.DA-02
0199-C2-KI-01 and 0199-C2-KI-02
0199-C2-MA-01 and 0199-C2-MA-02
0199-C2-BL-01 to 0199-C2-BL-04
0199-C2-BU-01 to 0199-C2-BU-10
0199-C2-BU.DA.-01 and 0199-C2-BU.DA.-02
0199-C2-AS-01 and 0199-C2-AS-02
0199-C2-RE-01 and 0199-C2-RE-02
0199-C2-RY-01 and 0199-C2-RY-02
0199-C2-BM-01 and 0199-C2-BM-02
0199-C2-SG-01

0199-C2-DG-01

Character Area 3 House type booklet:

0199-C3-CH-01 and 0199-C3-CH-02
0199-C3-ED-01 and 0199-C3-ED-02
0199-C3-TW-01 and 0199-C3-TW-02
0199-C3-WE-01 and 0199-C3-WE-02
0199-C3-SN-01 and 0199-C3-SN-02
0199-C3-WA-01 and 0199-C3-WA-02
0199-C3-PU-01 and 0199-C3-PU-02
0199-C3-TO-01 and 0199-C3-TO-02
0199-C3-DA-01 and 0199-C3-DA-02
0199-C3-DA.DA-01 and 0199-C3-DA.DA-02
0199-C3-KI-01 and 0199-C3-KI-02
0199-C3-ES-01 and 0199-C3-ES-02
0199-C3-AV-01 and 0199-C3-AV-02
0199-C3-AS-01 and 0199-C3-AS-02
0199-C3-SG-01
0199-C3-DG-01
0199-C3-CP-01

3. Prior to commencement of development a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- wheel washing facilities to prevent mud and detritus getting on to the public highway;
 - measures to control the emission of noise, dust and dirt during construction including appropriate measures;
 - a scheme for recycling/disposing of waste resulting from construction works;
 - delivery and construction working hours;
 - measures to control noise during any piling of foundations (if required);
 - measures for avoiding harm to protected and priority species (in particular bats and badgers) including method statements for undertaking construction activities in the best interest of biodiversity, appropriate protection zones, locations and timing of sensitive works and roles and responsibilities of an Ecological Clerk of Works; and
 - point of contact on site for enquiries.

The approved Construction Method Statement shall be strictly adhered to throughout the construction period of the development.

4. Prior to the commencement of development, a method statement, to include a programme of works, shall be submitted to and approved in writing by the local planning authority detailing the containment, control and where possible removal of Himalayan balsam, an invasive non-native species, on site. The measures shall be carried out strictly in accordance with the approved scheme and programme of works.
5. Prior to the commencement of development, including the importing of materials and any excavations, a method statement regarding protection measures for the existing trees shown to be retained on the approved drawings and in the Tree Survey (Revision B December 2014), shall be submitted to and approved in writing by the local planning authority. All works on site shall be undertaken in

accordance with the approved method statement. For the avoidance of doubt this condition excludes works necessary for routine tree maintenance, pruning and crowning works.

This method statement shall include details and locations of protective fencing, and construction details where any change in surface material or installation of services is proposed within the canopy spread and likely rooting zone of a tree. No trenches, pipe runs for services or drains shall be sited within the root protection area of the tree(s) on the site which are to be retained without the prior approval in writing of the local planning authority.

6. Prior to commencement of development, details of foul and surface water drainage works shall be submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with these approved details.
7. Prior to the commencement of development details of measures and a programme of works to enhance biodiversity shall be submitted to and approved in writing by the local planning authority and the works shall be carried out in accordance with the approved details and the programme of works. The required details shall include the following:
 - Native tree and hedgerow planting,
 - Wildflower meadow seeding,
 - Bat and bird boxes, and
 - Lighting scheme that avoids light spill onto the boundary features and retained mature trees.
8. Prior to commencement of development, a phasing plan detailing the installation of the road network and the green infrastructure within the site (including the main vehicular access, amenity and play space, pedestrian and cycle routes and car club parking spaces), shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved phasing plan. The main vehicular access from Boroughbridge Road, shall be constructed in accordance with the approved plans and made available for use before first occupation of a dwelling within the site.
9. No groundworks shall take place until a written scheme of archaeological investigation (WSI) has been submitted to and approved in writing by the local planning authority in writing. The WSI shall include details of: archaeological excavation of the site; a post-investigation programme of archaeological, artefactual and environmental analysis of excavated material; production of a report on the archaeological excavation and post-excavation analyses; deposition of the archaeological archive with the Yorkshire Museum; and a full programme of community involvement in the excavation and post-excavation phases of the project. For land that is included within the WSI, no work shall take place other than in accordance with the agreed WSI. The WSI should conform to standards set by the Chartered Institute for Archaeologists.

The development shall be completed in accordance with the programme set out in the approved WSI. A copy of a publication report shall be deposited with City of York Historic Environment Record to allow public dissemination of results within 12 months of completion or such other period as may be agreed in writing

with the local planning authority in accordance with the programme set out in the approved WSI.

10. Prior to their construction, detailed drawings showing areas of highway, footpaths/cycleways and other areas of open space to be adopted including their design and materials, shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details and the approved phasing plan.
11. Prior to first occupation of each dwelling hereby approved details of covered and secure cycle parking for the relevant dwelling shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be carried out in accordance with the approved details and prior to the first occupation of the dwelling to which it relates.
12. Prior to first occupation of each dwelling hereby approved, a scheme to provide electrical charging sockets, for the charging of electric vehicles, at each dwelling with off street parking spaces, shall be submitted to and approved in writing by the local planning authority. The sockets shall be provided and installed in accordance with the approved details prior to the first occupation of each relevant dwelling.

A strategy for accommodating electric vehicle charging facilities for dwellings with car parking which is either on street or within shared parking areas shall be submitted to and approved in writing by the local planning authority prior to first occupation of those dwellings. The facilities shall be installed in accordance with the approved details prior to first occupation of the relevant dwellings.

13. Prior to first occupation of the development hereby approved details of car parking facilities for car share/car club vehicles and a programme of works, shall be submitted to and approved in writing by the local planning authority. The car parking facilities shall be provided in accordance with the approved details and the programme of works, shall be for the exclusive use of electric vehicles, and shall be retained for such use at all times.
14. Prior to first occupation of the development hereby approved a travel plan shall be submitted to and approved in writing by the local planning authority. The measures within the approved travel plan shall be implemented in accordance with the approved details and programme.

In addition to the details set out in the Travel Plan by Sanderson Associates (March 2017) the plan shall contain the following information:

- Travel plan targets to take account of the number of trips to be taken off the network to reduce impact on the A59 and key junctions;
- Measures to promote sustainable travel, including sustainable transport incentives to residents and consideration of travel to local primary/secondary schools; and
- Travel plan implementation and monitoring schedule.

15. 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 and where remediation is necessary a remediation scheme must be prepared, 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.

16. Details of the equipped play areas shall be submitted to and approved in writing by the local planning authority prior to installation and provided in accordance with the approved plans and the approved phasing plan as specified in condition 8.

17. The dwellings hereby approved shall achieve the following measures:

- At least a 19% reduction in Dwelling Emission Rate compared to the target fabric energy efficiency rates as required under Part L1A of the Building Regulations 2013).
- A water consumption rate of 110 litres per person per day (calculated as per Part G of the Building Regulations).
- A reduction in carbon emissions of at least 28% compared to the target emission rate as required under Part L of the Building Regulations.

Prior to first occupation of each dwelling details of the measures undertaken to secure compliance with this condition shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

18. The residential accommodation shall be constructed so that it does not exceed the following noise levels:

- a) 30 dB LAeq (8 hour) and 45dB L_{Amax} inside bedrooms at night (23:00 - 07:00 hrs)
- b) 35 dB LAeq (16 hour) in all other habitable rooms during the day (07:00 - 23:00 hrs).

The internal noise levels shall be achieved with all windows shut and alternative means of ventilation provided if necessary.