

Meeting: Selby and Ainsty Area Constituency Planning Committee

Members: Councillors John Cattanach (Chair), Mark Crane, Mike Jordan, Cliff Lunn, Bob Packham (Vice-Chair), Steve Shaw-Wright and Arnold Warneken.

Date: Wednesday, 13th December, 2023

Time: 2.00 pm

Venue: Selby Civic Centre

Members of the public are entitled to attend this meeting as observers for all those items taken in open session. Please contact the named democratic services officer supporting this committee, details at the foot of the first page of the agenda, if you have any queries.

This meeting is being held as an in-person meeting that is being live-streamed and will be available to view via the following link [Agenda for Selby and Ainsty Area Constituency Planning Committee on Wednesday, 13th December, 2023, 2.00 pm | North Yorkshire Council](#).

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Agenda

- 1. Apologies for Absence**
- 2. Minutes for the Meeting held on 8 November 2023 (Pages 3 - 6)**
- 3. Declarations of Interests**
All Members are invited to declare at this point any interests, including the nature of those interests, or lobbying in respect of any items appearing on this agenda.
- 4. ZC23/03465/DVCMAJ - Land comprising Field at Branton Lane, Great Ouseburn, Y026 9RJ (Pages 7 - 22)**
Report of the Assistant Director - Planning – Community Development Services
- 5. ZC23/03071/OUT - Woodland View, York Road, Flaxby, North Yorkshire, HG5 0RR (Pages 23 -64)**
Report of the Assistant Director - Planning – Community Development Services

6. Any other items

Any other items which the Chair agrees should be considered as a matter of urgency because of special circumstances.

7. Date of Next Meeting

Wednesday, 10 January 2023 at 2.00 pm.

Members are reminded that in order to expedite business at the meeting and enable Officers to adapt their presentations to address areas causing difficulty, they are encouraged to contact Officers prior to the meeting with questions on technical issues in reports.

Agenda Contact Officer:

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Monday, 4 December 2023

North Yorkshire Council

Selby and Ainsty Area Constituency Planning Committee

Minutes of the meeting held on Wednesday, 8th November, 2023 commencing at 2.00 pm.

Councillor John Cattanach in the Chair plus Councillors Mark Crane, Cliff Lunn, Bob Packham, Stephanie Duckett (substitute for Councillor Jordan), and John McCartney (substitute for Councillor Shaw-Wright).

Officers present: Martin Grainger - Head of Development Management, Kate Lavelle – Solicitor, Hannah Blackburn – Planning Development Manager, Martin Evans – Principal Planning Officer; and Dawn Drury – Democratic Services Officer

Apologies: Mike Jordan, Steve Shaw-Wright and Arnold Warneken.

Copies of all documents considered are in the Minute Book

7 Apologies for Absence

Apologies noted (see above).

8 Minutes for the Meeting held on 13 September 2023

The minutes of the meeting held on Wednesday 13 September 2023 were confirmed and signed as an accurate record.

9 Declarations of Interests

Councillors Cattanach, Packham, Crane, Lunn, Duckett and McCartney confirmed that they had received an additional document on item 4 of the agenda from the applicant's agent, Savills.

Planning Applications

The Committee considered reports of the Assistant Director Planning – Community Development Services relating to applications for planning permission. During the meeting, Officers referred to additional information and representations which had been received.

Except where an alternative condition was contained in the report or an amendment made by the Committee, the conditions as set out in the report and the appropriate time limit conditions were to be attached in accordance with the relevant provisions

of Section 91 and 92 of the Town and Country Planning Act 1990.

In considering the report(s) of the Assistant Director Planning – Community Development Services, regard had been paid to the policies of the relevant development plan, the National Planning Policy Framework and all other material planning considerations. Where the Committee deferred consideration or refused planning permission the reasons for that decision are as shown in the report or as set out below.

Where the Committee granted planning permission in accordance with the recommendation in a report this was because the proposal is in accordance with the development plan, the National Planning Policy Framework or other material considerations as set out in the report unless otherwise specified below. Where the Committee granted planning permission contrary to the recommendation in the report the reasons for doing so and the conditions to be attached are set out below.

10 2022/0738/OUTM - Land North of Holy Family School, Station Road, Carlton, Goole

Considered:-

The Assistant Director Planning – Community Development Services sought determination of an application for outline planning permission for the erection of up to 190 dwellings (use class C3) formal and informal open space, landscaping, works and means of access (all other matters reserved) at land north of Holy Family School, Station Road, Carlton, Goole.

The Principal Planning Officer confirmed that there was no update note.

The agent for the applicant, Adam Key of Savills spoke in support of the application.

During consideration of the above application, the Committee discussed the following issues:-

- The Harron Homes development to the southwest of the application site which had been allowed on appeal.
- The Committee sought clarification from officers on the status of the five-year housing land supply in the area and were informed that the Local Planning Authority does have a five-year housing land supply in the Selby area.
- The weight applied by officers to the application, in relation to the emerging Local Plan; and whether the Local Plan from 2013 was outdated.
- The weight applied by officers to the application, in relation to the best and most versatile agricultural land.

The decision:-

That planning permission be REFUSED.

Reason:-

The Committee agreed with the reasons for refusal put forward by the Principal Planning Officer in section 12 of the report.

Voting Record:-

A vote was taken, and the motion was carried unanimously.

11 Any other items

There were no urgent items of business.

12 Date of Next Meeting

Wednesday 13 December 2023 – Civic Centre, Selby

The meeting concluded at 2.34 pm.

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North Yorkshire Council

Community Development Services

Selby and Ainsty Constituency Committee

13 DECEMBER 2023

**ZC23/03465/DVCMAJ – MINOR MATERIAL AMENDMENTS TO CONDITION 2
(APPROVED PLANS) TO ALLOW DORMER WINDOWS TO THE REAR OF PLOTS 1-6
PURSUANT TO PERMISSION 21/01288/DVCMAJ
AT LAND COMPRISING FIELD AT 444386 462084, BRANTON LANE, GREAT
OUSEBURN, YORK YO26 9RJ S ON BEHALF OF BRIERLEY HOMES LTD**

Report of the Assistant Director Planning – Community Development Services

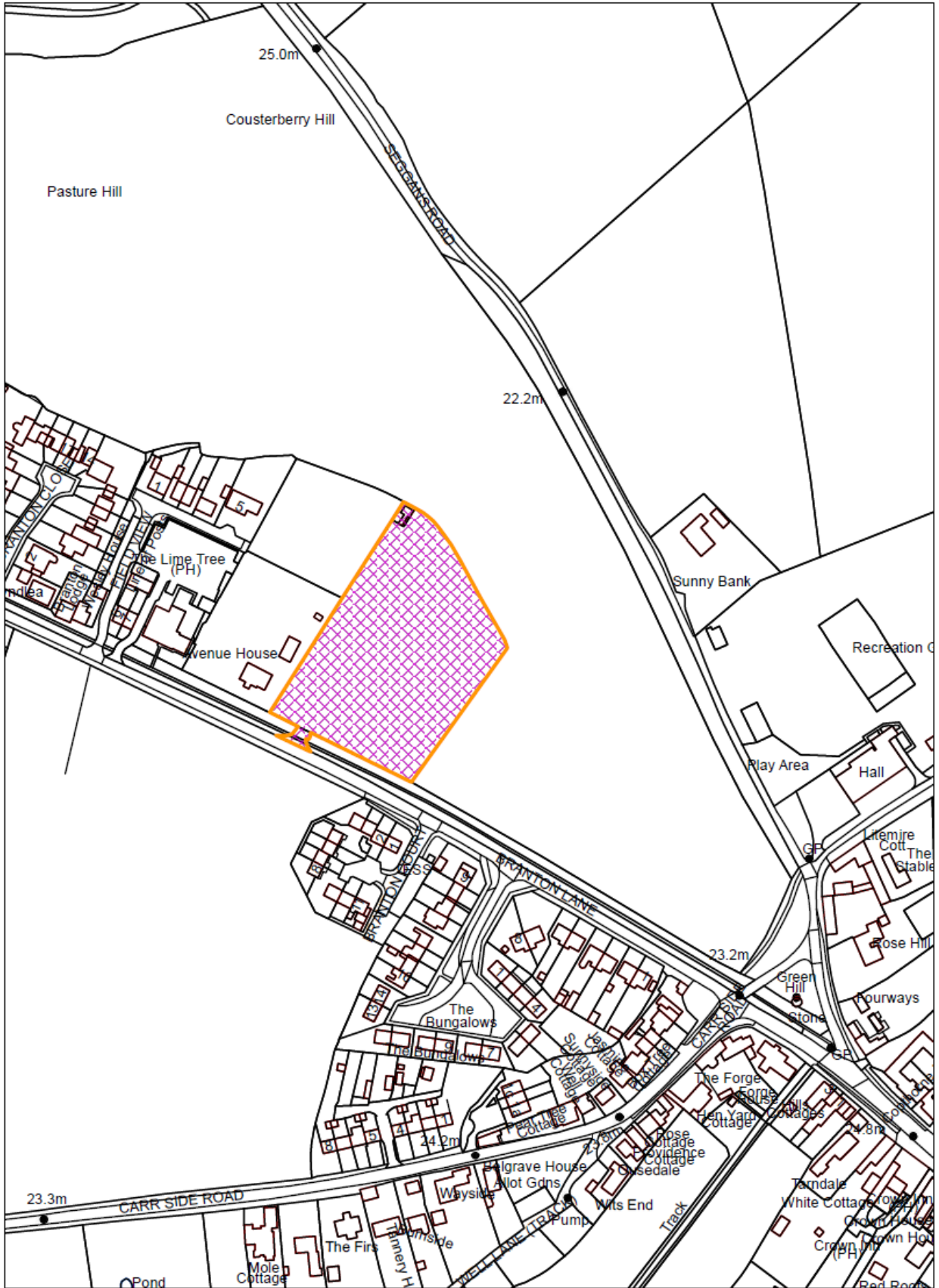
1.0 Purpose of the Report

- 1.1 To determine a planning application for Minor Material Amendments to Condition 2 (approved plans) to allow dormer windows to the rear of Plots 1-6 pursuant to permission 21/01288/DVCMAJ on land comprising Field at 444386 462084, Branton Lane, Great Ouseburn, York, YO26 9RJ.
- 1.2 The application is brought to the Planning Committee as Brierley Homes Ltd is a subsidiary of North Yorkshire Council.

2.0 EXECUTIVE SUMMARY

RECOMMENDATION: That planning permission be granted subject to the conditions listed below.

- 2.1. Planning permission was originally granted in October 2018 for the erection of nine houses with access, landscaping and parking on land off Branton Lane. The scheme was later amended in September 2021 to allow works to the site access and enabling works to start ahead of construction on the main development site.
- 2.2. This application seeks to amend Condition 2 to enable the substitution of revised plans to add dormer windows to the rear of Plots 1-6 of the approved development. Other incidental works to the roof of these plots include the insertion of rooflights and removal of two chimney stacks.
- 2.3. No other changes to the scheme are proposed that would affect the nature of the development as approved. The principle of development remains acceptable. The relevant issues for consideration relate to the design of the dormers, impact upon the character and appearance of the area and impact on residential amenities.
- 2.4. There are some issues concerning the design and number of the dormers and that the developer has constructed the dormers without the benefit of planning permission. However, for the reasons given in the report and taking all matters into consideration it is recommended that planning permission is granted.



Location Plan

Scale 1:2,500



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12/4/2023

3.0 Preliminary Matters

- 3.1. Access to the case file on Public Access can be found [here](#)
- 3.2. The following planning history is particularly relevant to this application:
- 17/04317/FULMAJ: Erection of 9 dwellings with associated access, parking and landscaping. Approved 25 October 2018
 - 21/01288/DVCMAJ: Minor Material Amendments to Condition 4 (highways and dirt), 5 (highway surface water), 6 (highway works), 12 (surface water drainage) and 13 (surface water infrastructure) to enable access and enabling works to start ahead of commencement of the main development pursuant to permission 17/04317/FULMAJ. Approved 13 September 2021.
- 3.3. Construction works on site have commenced with the scheme approved under 21/01288/DVCMAJ being the one that has been implemented. The variation to the wording of various conditions sought as part of that application allowed for works to the Branton Lane carriageway, site access as well as other tree protection and drainage works to take place ahead of works commencing on the main part of the site. No other changes to the scheme as originally approved were made.
- 3.4. Amended drawings were received on 30 November 2023. A further round of public or statutory consultation has not taken place because the revisions made correct minor discrepancies shown on the elevations.

4.0 Site and Surroundings

- 4.1. The application site is located on the north-eastern side of Branton Lane located outside of, but immediately adjacent to, the development limit for Great Ouseburn village. It is approximately 0.87 hectares in size.
- 4.2. The site originally comprised a vacant self-contained paddock. Works commenced in October 2021 to implement the approved development with the houses fronting Branton Lane (Plots 1-6) now at a relatively advanced stage of construction. Access to the housing scheme is via a new access point off Branton Lane.
- 4.3. Great Ouseburn Conservation Area is located about 160m to the south-east which contains listed buildings, the closest of which are on Main Street.
- 4.4. There is one footway to Branton Lane on the northern side of the carriageway, outside of the application site, where there is a double-staggered line of Lime trees linking Great Ouseburn village and Branton Green (to the north-west). These trees are protected under Tree Preservation Order 2/1970.
- 4.5. Agricultural fields adjoin the site to the south-east and north-east. To the west there are residential properties along Branton Lane and the Lime Tree Inn. To the south, on the opposite side of Branton Lane, is a development for 46 dwellings under construction by Stonebridge Homes

5.0 Description of Proposal

- 5.1. This application seeks minor material amendments to Condition 2 (approved plans) of permission 21/01288/DVCMAJ to enable the substitution of revised plans to include dormer windows to the rear roof slopes of Plots 1-6. Other incidental works include insertion of roof lights to the front roof slope and removal of two chimney stacks along the length of the terrace.
- 5.2. At the time of an officer site inspection on 17 November 2023, the dormer windows were in place as well as the other works to the roof albeit construction works to the dwellings on Plots 1-6 had not finished. Above grade works to the remaining plots on the rear half of the site have not commenced.

6.0 Planning Policy and Guidance

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

Adopted Development Plan

- 6.2. The Adopted Development Plan for this site is:

- Harrogate and District Local Plan 2014-2035 (adopted March 2020)

Emerging Development Plan – Material Consideration

- 6.3. The North Yorkshire Local Plan is the emerging development plan for this site though no weight can be applied in respect of this document at the current time as it is at an early stage of preparation.

Guidance - Material Considerations

- 6.4. Relevant guidance for this application is:

- National Planning Policy Framework 2023
- National Planning Practice Guidance
- National Design Guide 2021
- House Extensions and Garages Design Guide SPD 2005
- Great Ouseburn Conservation Area Character Appraisal 2009

7.0 Consultation Responses

- 7.1. The following consultation responses have been received and have been summarised below.
- 7.2. **Great Ouseburn Parish Council:** No objections but comments that the work has already been undertaken.
- 7.3. **Ministry of Defence Safeguarding Team:** The site occupies the statutory safeguarding zones surrounding RAF Linton-on-Ouse. No safeguarding objections to the proposal.

Local Representations

- 7.4. No local representations have been received.

8.0 Environment Impact Assessment (EIA)

- 8.1. The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environment Statement is therefore required.

9.0 Main Issues

- 9.1. The key considerations in the assessment of this application are:
- Are the amendments acceptable?

10.0 ASSESSMENT

Are the amendments acceptable?

- 10.1. An application can be made under Section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. Such applications are to be considered against the development plan, material considerations and conditions attached to the original permission. The Harrogate District Local Plan 2014-2035 was approved in March 2020.
- 10.2. The principle of development has already been established with the previous planning permissions of which 21/01288/DVCMAJ has been implemented. There are no changes to the number of dwellings, building footprint, access arrangements and landscaping from that previously approved and so there is no change in terms of impacts in relation to highways, parking, flood risk, trees, landscaping or ecology.
- 10.3. The principal matters for consideration relate to design, impact upon the character and appearance of the area and impact upon residential amenities.

Design

- 10.4. Policy HP3: Local Distinctiveness advises that development should incorporate high quality building, urban and landscape design that protects, enhances or reinforces the local distinctiveness of the area. Matters relating to scale, visual relationships, views and context are key considerations here.
- 10.5. As approved, Plots 1-6 comprise a row of two storey terraced properties containing two and three bedrooms (with small study). The proposal seeks to convert the roofspace within each dwelling to provide an additional bedroom. Two small rear dormer windows are provided per dwelling (12 in total). They have a flat roof and will be finished with similar materials to those used in the approved scheme. The dormers line up vertically with the main windows below.
- 10.6. In addition, rooflights are inserted in the front roof slope of each property to provide additional light and ventilation to the new bedroom.

- 10.7. The original scheme included 8 chimney stacks along the length of the row of terraced properties. Two chimney stacks have been removed to facilitate the conversion of the loft spaces.
- 10.8. The Harrogate House Extensions and Garages SPD provides useful guidance relevant to the assessment of the dormer windows. The guidance advises that wide flat-roofed dormers are generally unacceptable and where dormers are acceptable, they should not be so numerous or large that they dominate the roof.
- 10.9. In this case the flat-roofed dormers are small and contained within the roofslope, set well below the ridge, above the eaves and set in from the side walls. To that extent the dormers appear subservient. However, due to the number of dormers and their flat-roof design they appear as one large wide dormer in certain views as discussed below.
- 10.10. The SPD further advises that dormers should be located to the rear of the dwelling wherever possible to preserve the character of the street. In this case the dormers are located at the rear and as such do not significantly impact the immediate streetscape along Branton Lane.
- 10.11. The rear roof slopes are however prominent in some longer distance views given that the approved development is surrounded by fields to the south-east (side) and north-east (rear). The dormers are visible from Seggans Road (particularly during winter months) and when viewed from an oblique angle, the dormers read as one wide dormer rather than a series of small individual roof extensions which adds to their prominence and visual bulk in this view.
- 10.12. The dormers are visible from the village green on the edge of the Great Ouseburn Conservation Area. There is a key view identified in the Conservation Area Appraisal looking across Seggans Field towards the approved development. The appraisal mentions that views of the open countryside across Seggans Field and towards the protected Lime trees along Branton Lane are important to the setting of the village.
- 10.13. Although there is a side view of the dormers from the village green given the separation distance (circa 160m) the dormers do not materially change the view or detract from the open setting of the village over and above that already considered acceptable with the approved development in place. Long distance views towards other nearby existing houses are possible in this view.
- 10.14. In coming to this conclusion, regard has been had to the requirements of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that special attention is paid in the exercise of planning functions to the desirability of preserving and enhancing the character and appearance of a conservation area.
- 10.15. It is important that any development makes a contextual response to its surroundings. There are very few existing dormer windows within the wider Great Ouseburn village and none within the vicinity of the approved development site with the exception of 'The Avenue' residential property adjacent to the site's western boundary. Here the pitched roof dormer is sited well below the main roofline being positioned in the centre of the catslide roof at the rear. No dormers are proposed within the new build development

under construction opposite the site. In this context, the dormer windows on the subject site appear uncharacteristic of the area, especially when considering the number of dormers and their flat roof design.

- 10.16 No issues are raised with the insertion of the roof lights to the front roof slope. They are set at an appropriate height within the roofslope and rooflights are a common feature of other nearby properties. The loss of two chimney stacks is acceptable on the basis that there are six remaining stacks along the terrace.

Impact upon Residential Amenity

- 10.17 Policy HP4 of the Local Plan: Protecting Amenity advises that development proposals should be designed to ensure that they will not result in significant adverse impacts upon the amenities of occupiers and neighbours. Amenity considerations include overlooking, overbearing, loss of privacy and pollution impacts.
- 10.18 There are no existing neighbouring properties that could be affected by the dormers in terms of overlooking and loss of privacy. The orientation and siting of the three detached houses to the rear (Plots 7-9) of the approved development mean that the dormers would not harm the residential amenities of future occupiers of these properties.

Permitted Development

- 10.19 Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out the types of improvements or extensions of homes that can be undertaken without the need to apply for planning permission. Class B and C of the Order deal specifically with additions and other alterations to the roof of a dwellinghouse.
- 10.20 It is often the case that permitted development rights are either removed or restricted by condition when new residential development is granted planning permission. In this case permitted development rights were not removed or restricted at the time of the original permission and so the dormer windows as well as the other incidental works to the roof (i.e. insertion of the rooflights and alterations to the chimney stacks) could be undertaken in the future under permitted development Classes B and C of the Order.
- 10.21 A Section 73 application seeking approval for minor changes to the scheme has been submitted as permitted developments do not apply while houses are under construction. Brierley Homes wish to undertake the works to facilitate the provision of an additional room in each of the six terraced dwellings.
- 10.22 In this scenario, the issue here is the timing of the works which as noted earlier have already been carried out ahead of either planning permission for changes to the scheme being granted or else the works being undertaken under permitted development.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1. The principle of the development has already been established through the previous permissions for residential development on the site.

- 11.2. The number of dormer windows and their flat-roof design are not reflective of guidance contained in the House Extensions and Garages SPD. Nor are dormer additions typical in the immediate locale. The rear roof slopes of the houses are more exposed in some views than perhaps would normally be the case because the site adjoins fields on two of its boundaries. As a result, the dormers appear prominent and bulky in some longer distance views (particularly in winter). The immediate streetscape of Branton Lane is not seriously affected.
- 11.3. Although the dormers are visible from the edge of the Great Ouseburn Conservation Area they are not significantly detrimental to the rural setting of the village given the distance from the conservation area and presence of other houses in this view. The character of the conservation area is therefore preserved.
- 11.4. A key factor for consideration is that the roof additions and alterations could be undertaken by individuals in the future under permitted development rights once the houses were finished. The fact that the developer has carried out the works does at least ensure consistency in size and design of the dormers across the terrace.
- 11.5. That the works have already taken place without the benefit of planning permission is not an approach that is supported by officers. However, in this case, it is considered that this of itself does not provide justification for planning permission to be refused.
- 11.6. The planning judgement here is finely balanced but when taking all matters into consideration it is concluded that the changes to Condition 2 (approved drawings) to allow the roof additions and other alterations are acceptable.

12.0 RECOMMENDATION

- 12.1 That planning permission be GRANTED subject to conditions listed below.

Recommended conditions:

1. The development hereby permitted shall be carried out strictly in accordance with the following approved drawings:

Location Plan – Drawing 1508-100
 Site Plan – Drawing 1682-100 Rev J
 House Types A, B & K – Drawing 1682-116 Rev C
 House Types H & J – Drawing 1508-117 Rev B
 House Types Garages – Drawing 1508-118
 Streetscapes – Drawing 1682-119 Rev B

Reason: For the avoidance of doubt and in the interests of proper planning.

2. Works to establish the site compound, site clearance, demolition, excavation or depositing of material in connection with the construction of the development must be carried out in accordance with the details approved in writing by the Local Planning Authority under 22/04503/DISCON which makes provision for:

- on site parking capable of accommodating all staff and sub-contractors vehicles clear of the public highway;
- on site materials storage area capable of accommodating all materials required for the operation of the site; and
- the approved areas shall be kept available for their intended use at all times that the construction works are in operation.

Reason: To provide for appropriate on-site construction vehicle parking and associated facilities in the interests of highway safety and the general amenity of the area.

3. Measures to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site must be carried out in accordance with the details approved under 22/04503/DISCON. The approved measures must be kept available and in full working order until such time as the Local Planning Authority agrees in writing to their withdrawal.

Reason: To ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.

4. The measures to prevent surface water from non-highway areas discharging onto the existing or proposed highway must be carried out in accordance with the details approved in writing by the Local Planning Authority under 22/04503/DISCON.

Reason: In the interests of highway safety.

5. Following completion of the access and enabling works, the development must be carried out in accordance with the following details approved in writing by the Local Planning Authority under 22/04503/DISCON:

1. Detailed engineering drawings showing:

- highway layout including the highway boundary
- dimensions of any carriageway, cycleway, footway and verges
- visibility splays
- buildings and site layout including levels
- accesses and driveways
- drainage and sewerage system
- lining and signing
- all types of surfacing (including tactiles) kerbing and edging

2. Full highway construction details including:

- typical highway cross-sections with specifications for all types of construction for carriageways, cycleways, and footways / footpaths

- cross sections at intervals along the roads showing existing and proposed ground levels
 - kerb and edge construction details
 - typical drainage construction details
3. street lighting
 4. drawings for new roads and footways / footpaths with all relevant dimensions for their setting out including reference dimensions to existing features.
 5. Full working drawings for any structures which affect or form part of the highway network.
 6. Programme for completing the works.

The development must be carried out in accordance with the approved drawings and details unless otherwise agreed in writing by the Local Planning Authority (in consultation with the Highway Authority).

Reason: To secure an appropriate highway constructed to an adoptable standard (where practicably possible) in the interests of highway safety and the amenity and convenience of highway users.

6. The enabling works and access works must be carried out in accordance with the following details approved in writing by the Local Planning Authority (in consultation with the Highway Authority) under 21/04073/DISCON:

1. Detailed engineering drawings showing:
 - Highway layout including the highway boundary
 - Dimensions of any carriageway, cycleway, footway and verges,
 - Visibility splays
 - Access (including measures approved to ensure the principal site access is constructed to the satisfaction of the Highway Authority without harming existing trees)
 - Drainage and sewerage system
 - Lining and signing
 - Traffic calming scheme on Branton Lane, outside of the site, including timetable for implementation
 - All types of surfacing (including tactiles) kerbing and edging in relation to the site access

2. Full highway construction details including:
 - Typical highway cross-sections showing a specification for all types of construction proposed for works in relation to access works
 - Cross sections at intervals along the proposed roads showing existing and proposed ground levels
 - Kerb and edging construction details
 - Typical drainage construction details

3. Drawings for new roads and footways / footpaths with all relevant dimensions in relation to the site access for their setting out including reference dimensions to existing features

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

5. The programme for completing the works.

The development must be carried out in accordance with the approved drawings and details.

Reason: To secure an appropriate highway and site access constructed to an adoptable standard (where practicably possible) in the interests of highway safety and the amenity and convenience of highway users.

7. No dwelling 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.

The completion of all road works, including any phasing, shall be carried out in accordance with a programme of works approved in writing by the Local Planning Authority (in consultation with the Highway Authority) before first occupation of the development hereby permitted.

Reason: To ensure safe and appropriate access and egress to the dwellings, in the interests of highway safety and the convenience of future occupiers.

8. There shall be no access or egress by any vehicles between the highway and the application site (except for the purpose of constructing the initial site access) until splays are provided giving clear visibility of 2.4m x 43m measured along both channel lines of Branton Lane. Once created these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason: In the interests of highway safety.

9. The highway improvement works (listed below) must be carried out in accordance with the details approved in writing by the Local Planning Authority (in consultation with the Highway Authority) under 21/04073/DISCON:

- An independent Stage 2 Safety Audit carried out in accordance with HD19/03 Road Safety Audit or any superseding regulations

- Programme for the completion of the proposed works

The required highway improvements include the provision of a traffic calming scheme on Branton Lane and associated works undertaken to the satisfaction of the Local Planning Authority (in consultation with the Highway Authority).

Reason: In the interests of the safety and convenience of highway and other road users.

10. No dwelling shall be occupied until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority (in consultation with the Highways Authority): Provision of a traffic calming scheme on Branton Lane and associated works.

Reason: In the interests of the safety and convenience of highway and other road users.

11. 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 by competent persons and a written report of the findings must be produced and approved in writing by the Local Planning Authority.

Where remediation is necessary, a 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 approved remediation scheme must be carried out in accordance with its terms prior to 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 submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.

12. The development hereby approved must be carried out in accordance with the scheme for the provision of surface water drainage works approved in writing by the Local Planning Authority under 22/04503/DISCON. The approved scheme must be implemented prior to first occupation of the development.

The approved scheme demonstrates that there is sufficient on-site attenuation to accommodate a 1 in 30 year storm. Storm water resulting from a 1 in 100 year rainfall event, plus 40% to account for climate change and urban creep is to be stored on site without risk to people or property and without increasing the restricted flows to the watercourse.

Reason: To prevent the increased risk of flooding, to ensure the future maintenance of the sustainable drainage system, to improve and protect water quality and improve habitat and amenity.

13. The development hereby approved must be carried out in accordance with the scheme for the provision, implementation and maintenance of a surface water regulation system approved in writing by the Local Planning Authority under 22/04503/DISCON. The rate of discharge would not be expected to exceed that of a “greenfield site” taken as 1.4 lit/sec/ha. The approved scheme shall be implemented prior to first occupation of the development.

Reason: To ensure that the development can be properly drained.

14. The development hereby permitted must be carried out in accordance with the Ecological Enhancement and Management Plan approved in writing by the Local Planning Authority under 21/04073/DISCON. The approved plan includes measures to avoid harm to Great Crested Newts and nesting birds and the provision of integrated bat and swift bricks as well as habitat improvements through landscaping and using native species to external boundaries. The approved scheme must be implemented according to the agreed timescales.

Reason: To safeguard the rights of control by the Local Planning Authority in these respects and in the interests of amenity.

15. The development hereby permitted must be carried out in accordance with the hard and soft landscaping scheme approved in writing by the Local Planning Authority under 22/04503/DISCON. The approved scheme includes details of the tree and/or shrub planting, all surface materials and boundary treatments, including walls and fences. The scheme also specifies the materials, species, tree and plant sizes, number and planting densities, timing of implementation of the scheme, including any earthworks required, and thereafter the long term management and maintenance measures to be in place. The landscaping works must be carried out in accordance with the approved details and must be retained for the lifetime of the development.

In the event of failure of any trees or shrubs planted in accordance with the approved scheme to survive for a period of five years from the date of completion of implementation of that scheme such trees and/or shrubs shall be replaced by the developer with live specimens of such species in such number as may be approved by the Local Planning Authority.

Reason: To safeguard the rights of control by the Local Planning Authority in these respects and in the interests of amenity.

16. The development must be carried out in accordance with the measures detailed in the Arboricultural Method Statement approved by the Local Planning Authority under 21/04073/DISCON. The approved method statement includes the following:

- hand dig and/or air spade investigation to area for access into the site noting the location, size and number of roots within the proposed access area
- details of how the access will be constructed to avoid harm to the existing trees
- details of the root protection area fencing around the trees or shrubs or planting to be retained on the entire site. The fencing must be in accordance with the requirements of BS 5837:2012 Trees in Relation to Construction – Recommendations, or any subsequent amendments to that document.

The developer must maintain the root protection fences on site in accordance with the approved details until all development the subject of this permission is completed. The level of land within the fenced areas shall not be altered and the site access must be constructed in accordance with the approved details.

Reason: To ensure the protection of trees and/or shrubs during the carrying out of the development.

17. No dwelling shall be occupied until the associated car parking facilities have been constructed in accordance with the approved site layout. Once created, the car parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason: To provide for adequate provision of off-street accommodation for vehicles in the interest of safety and the general amenity of the development.

18. The measures to incorporate facilities for charging plug-in and other ultra low emission vehicles approved in writing by the Local Planning Authority under 22/04503/DISCON in connection with Plots 1 to 6 must be implemented and made available prior to first occupation of these plots.

Reason: In the interests of air quality and to support sustainable transport modes.

19. Before any work is carried out above grade for Plots 7 to 9, details of the measures to incorporate facilities for charging plug-in and other ultra-low emission vehicles shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented and made available prior to first occupation of these plots.

Reason: In the interests of air quality and to support sustainable transport modes.

20. Before the first use of any materials in the external construction of the roofs and walls of Plots 7 to 9 and their associated garages, details of the materials, including samples of those materials to be made available for inspection on site, as well as the design and materials used to construct the windows and doors shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.

Reason: In order to ensure the quality of the external materials and that they are contextual and conform to the amenity requirements of the locality.

21. The lighting for Plots 1 to 6 approved in writing by the Local Planning Authority under 22/04503/DISCON shall be implemented in accordance with the approved details and made available prior to first occupation of these plots.

Reason: In the interests of the amenities of neighbouring properties, landscape character and security of the development.

22. Prior to commencement of above grade works of Plots 7 to 9, details of the proposed lighting, including siting, height, design and position of any lighting, shall be submitted to and approved in writing by the Local Planning Authority. The lighting shall be

implemented in accordance with the approved details and made available prior to first occupation of these plots.

Reason: In the interests of the amenities of neighbouring properties, landscape character and security of the development.

Informatives

The planning permission hereby granted must be read in conjunction with the accompanying S106 Legal Agreement dated 25 October 2018.

The area subject to the access and enabling works is shown on Drawing No. BH19004-APP-ZZ-ZZ-DR-A-3105 Rev P1. The access and enabling works are defined as:

- Branton Lane carriageway: works to a 75m length to improve, realign, and lift the carriageway level to suit the site access bellmouth, tree protection works, visibility splays and match the improvement works undertaken to the west of the site.
- Branton Lane: traffic calming measures include speed table, road marking works and associated traffic signs.
- Site access bellmouth: carriageway works to construct the site access bellmouth
- Site access road: carriageway works to construct the first 10m of the site access road.
- Tree protection works: works to install an approved system to protect the Lime tree root systems and provide a suitable foundation beneath the new bellmouth and access road.
- Footpath works
- Drainage works associated with the above.
- Utility protection and supply connections beneath new or improved carriageway

Target Determination Date: 28 December 2023

Case Officer: Helen Goulden, helen.goulden@northyorks.gov.uk

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North Yorkshire Council

Community Development Services

Selby and Ainsty Area Constituency Committee

13TH DECEMBER 2023

ZC23/03071/OUT – OUTLINE APPLICATION FOR UP TO 4 ECO-CUSTOM SELF BUILD HOMES WITH ALL MATTERS RESERVED AT WOODLAND VIEW, YORK ROAD, FLAXBY, NORTH YORKSHIRE, HG5 0RR ON BEHALF OF HOLMES PLANNING LTD

Report of the Assistant Director Planning – Community Development Services

1.0 Purpose of the Report

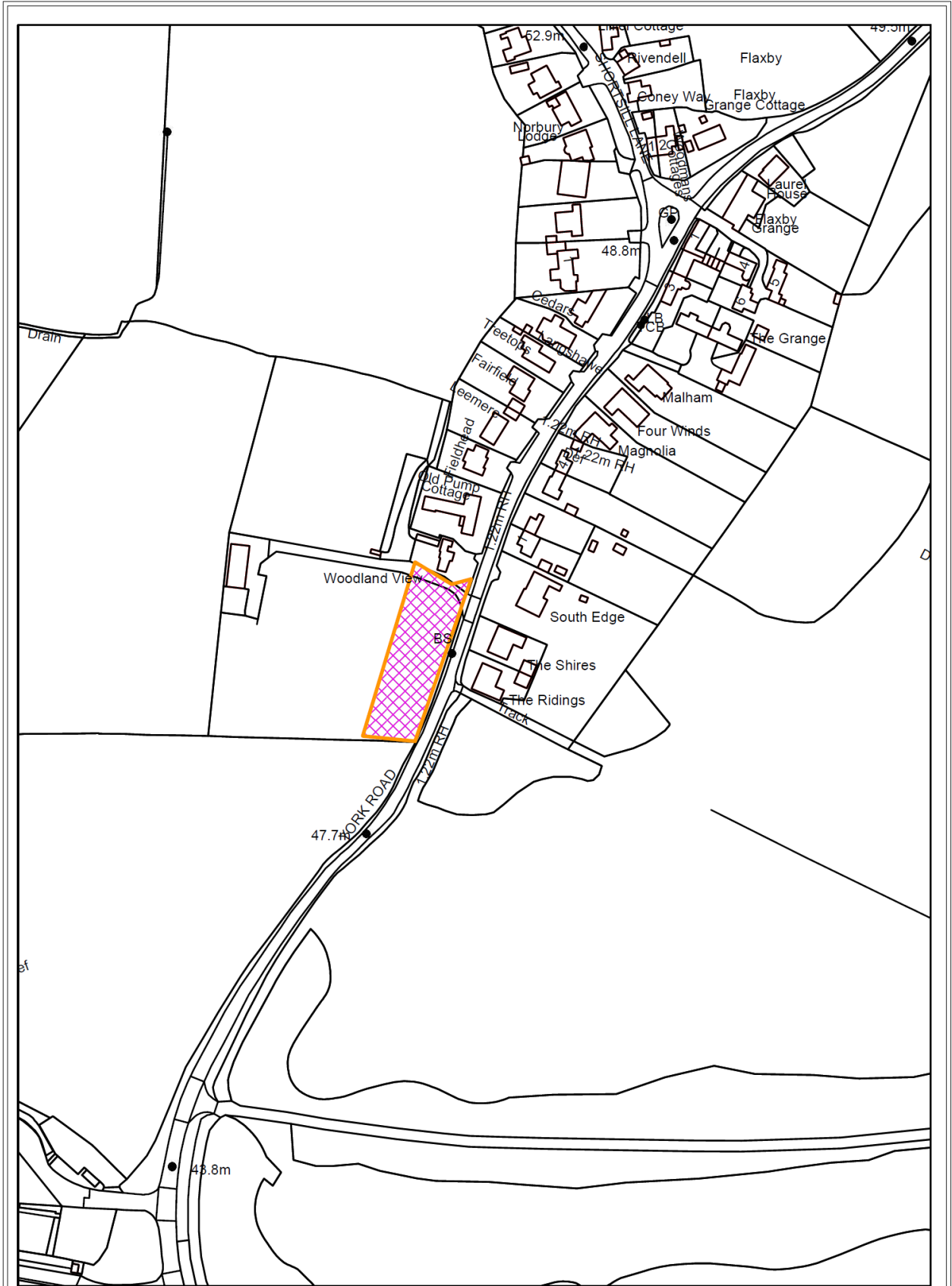
- 1.1 To determine an outline planning application for up to 4 eco-custom self build homes with all matters reserved on land at Woodland View, York Road, Flaxby, North Yorkshire, HG5 0RR.
- 1.2 This application is reported to the Selby and Ainsty Area Constituency Committee because it involves land/premises owned or controlled by a Councillor, as a Community Interest Company that a Councillor is a Director of has recently taken/signed a lease on part of the site.

2.0 EXECUTIVE SUMMARY

RECOMMENDATION: That planning permission be REFUSED.

- 2.1. This application seeks outline permission, with all matters reserved, for up to 4 dwellings on part of a field on York Road, to the south of Flaxby. Details submitted with the application indicate that the proposed dwellings are intended to be custom or self-build dwellings.
- 2.2. Flaxby is a small settlement which is not identified as a Service Village or a Smaller Village in the Harrogate District Local Plan 2014-2035 (the Local Plan), and which therefore does not have a defined settlement development limit in the Local Plan. Consequently, the village and the site are outside development limits and are within the countryside.
- 2.3. A previous outline application for 'up to 5 eco-custom self build homes with all matters reserved' on the same site was refused in August 2022 for reasons relating to the site being outside settlement development limits and in an inaccessible location, the loss of agricultural land and harm to the character and appearance. A subsequent appeal against that refusal was dismissed in March 2023. A copy of the appeal decision is included at Appendix A.
- 2.4. An earlier outline application for 'up to 9 eco custom self-build homes', on a larger area of land including the current application site and land to the west, was refused in January 2022. An appeal against that refusal was also dismissed, in May 2022. A copy of the appeal decision is included at Appendix B.

- 2.5. The site is in the countryside and is not considered an appropriate location for new housing development, having regard to its accessibility to services and facilities and to the Council's growth strategy. The development would cause harm to the character and appearance of the site and its surroundings and would result in the loss of agricultural land.
- 2.6. Part of the site is at risk of surface water flooding and, in the absence of a sequential test, it has not been demonstrated that there are no reasonably available alternative sites in areas of lower flood risk which could accommodate the development. Furthermore, based on the submitted information, it has not been demonstrated that the development would be safe from flooding for its lifetime without increasing flood risk elsewhere.
- 2.7. It is also considered that insufficient information has been provided to demonstrate that satisfactory living conditions for future occupants could be achieved, having regard to the potential for noise from nearby commercial buildings, or to demonstrate that the development would not have an adverse impact on protected species.
- 2.8. The proposed development is very similar to two previous applications which were refused and dismissed on appeal, most recently in March 2023. Despite a reduction by one in the number of proposed dwellings, the development is still considered unacceptable for the reasons set out above. Substantial weight has been given to the provision of custom or self-build dwellings as a benefit weighing in favour of the proposals, consistent with the weight afforded to this matter by Inspectors in recent appeal decisions. Nevertheless, for the reasons given, and consistent with the previous Inspectors' conclusions, it is not considered to outweigh the harm identified.
- 2.9. It is therefore recommended that the application is refused.



Location Plan

Scale 1:2,500



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04/12/2023

3.0 Preliminary Matters

3.1. Access to the case file on Public Access can be found [here](#)

3.2. The following planning history is relevant to this application:

- 22/02517/OUT – Outline application for erection of up to 5 eco-custom self build homes with all matters reserved. Refused 25 August 2022. Subsequent appeal dismissed 31 March 2023 (appeal reference: APP/E2734/W/22/3307127). *This application related to the same site as the current application.*
- 21/04716/OUT – Outline application for erection of up to 9 eco-custom dwellings with all matters reserved. Refused 28 January 2022. Subsequent appeal dismissed 31 May 2022 (appeal reference: APP/E2734/W/22/3293545). *This application related to a larger area of land than the current application, and included the current application site and land within the wider field to the west.*
- 17/05484/OUT – Outline Application for Erection of 5 no. Dwellings with Scale and Access considered. Refused 8 March 2018. *This application related to a larger area of land than the current application, and included the current application site and land within the wider field to the west.*

3.3. The following application, which related to a separate area of land to the north west of the current application site and which included the access track to the north of the site, is also relevant:

- 22/02375/OUT – Outline application for change of use of agricultural land to nature reserve with all matters reserved. Refused 26 August 2022.

4.0 Site and Surroundings

4.1. The application relates to part of an existing field on the western side of York Road in Flaxby. According to the submitted details, the site is around 0.26 hectares in area. There is an existing access track to the north of the field, within the application site boundary. A relatively dense, well-established hedgerow runs along the site's York Road frontage.

4.2. Flaxby is a small settlement located in the countryside, characterised by a generally linear pattern of development along York Road and Shortsill Lane. There are existing houses on York Road to the north and east of the site. Fields to the south and west separate the site and the village from a number of commercial buildings located near the junction of York Road and the A59, further to the south.

4.3. As noted in the Inspectors' decisions for two previously dismissed appeals at the site, Flaxby is a village without services or facilities. There are bus stops in the village, served by buses which run to Boroughbridge in one direction and Knaresborough in the other. However, those services are very infrequent, with no more than 6 or 7 services per day in either direction, and no services on Sundays.

5.0 Description of Proposal

- 5.1. This application seeks outline planning permission, with all matters reserved, for a development described as 'up to 4 eco-custom self build homes'.
- 5.2. The application follows two previous outline applications for similar proposals, both of which were refused and subsequently dismissed on appeal.
- 5.3. An application for 'up to 9 eco-custom self build homes with all matters reserved' on a larger area of land, which included the current application site and land within the wider field to the west, was refused in January 2022. A subsequent appeal was dismissed in May 2022 (the first appeal). A copy of the appeal decision is included at Appendix B.
- 5.4. A subsequent outline application for 'up to 5 eco-custom self build homes with all matters reserved', on the same site as the current application, was refused in August 2022. An appeal against that refusal was dismissed in March 2023 (the second appeal). A copy of the appeal decision is included at Appendix A.
- 5.5. The current application relates to a revised proposal for up to 4 'eco-custom self build homes'. The submitted location plan indicates that access is proposed from the existing access track to the north. An indicative layout drawing has also been submitted, showing the footprints of 4 houses on the site. That drawing has been considered solely on an 'indicative' basis, as all matters are reserved.

6.0 Planning Policy and Guidance

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

Adopted Development Plan

- 6.2. The Adopted Development Plan for this site is:
 - Harrogate District Local Plan 2014-2035 (adopted 2020) (the Local Plan);
 - Minerals and Waste Joint Plan (adopted 2022)

Emerging Development Plan – Material Consideration

- 6.3. The North Yorkshire Local Plan is the emerging development plan for this site, though no weight can be applied in respect of this document at the current time as it is at an early stage of preparation.

Guidance - Material Considerations

- 6.4. Relevant guidance for this application is:
 - National Planning Policy Framework 2021 (NPPF)
 - National Planning Practice Guidance (PPG)

- National Design Guide 2021
- Government Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System
- Harrogate Provision of Open Space and Village Halls Supplementary Planning Document (SPD)
- Harrogate House Extensions and Garages Design Guide SPD
- Harrogate Landscape Character Assessment

7.0 Consultation Responses

7.1. The following consultation responses have been received and have been summarised below.

7.2. **Parish Council:** Object. Application is 'little changed' from previous application for 'up to 5 eco-custom self build homes. Could be argued that, 'in substance, this current application has already been considered and rejected'. The following points are made:

- Site is not included in Local Plan. Previous Inspector noted that 'the Council can demonstrate a housing land supply'. Development on the site is not required.
- Flaxby is a small village with no services or facilities. 'No services or facilities have appeared since the original application for 9 houses was made'.
- Inadequate public transport – only 6 buses per day.
- No local job opportunities that do not require travel by car.
- No safe or easy walking routes to local services or amenities. Bridleway and footpaths to Knaresborough are through fields. A59 is dangerous to cross and walk along with no footpath. Regarding pending development at Flaxby Green Park, previous Inspector noted 'most convenient route to access that site without a vehicle would be along a secluded and unlit right of way and would involve crossing the busy A59'. Nothing has changed regarding this pedestrian access.
- Dangerous disruption at entrance to Flaxby village from building 4 houses separately.
- Change to character of village. Insufficient detail regarding size of houses. No assurance that self-build houses would be in keeping with character of the village. Development would erode 'buffer' that site provides between Flaxby and industrial buildings to the south.
- Reference to Environmental Health Officer's comments in relation to noise.
- Impact on capacity of local roads and infrastructure.
- Loss of Grade 2 agricultural land. Referred to in previous Inspectors' decisions.
- Queries regarding reference to Flaxby Village Community Interest Company in application documents. Insufficient detail provided regarding 'offer' of land referred to in Planning Statement.
- Reduction from 5 houses to 4 does not 'invalidate' previous Inspector's conclusion that harm associated with the proposal outweighs any benefits from proposed custom and self-build houses. Some of the benefits are reduced compared with previous applications, but disadvantages such as loss of agricultural land and loss of 'buffer' remain unchanged.
- Potential for proposals for further land to be developed if this application is approved.

- 7.3. **Division Member:** No comments received from Division Member for this area. Request received from a Member for another Division for the application to be considered by Committee. Request rejected due to scale of development and previous appeal history (however application is being reported to committee for other reasons as set out above).
- 7.4. **Arboricultural Officer:** No objection. Landscaping condition recommended.
- 7.5. **Environmental Health:** Concern that introducing noise sensitive premises close to a pre-existing noise environment would impact both on proposed occupants and on the ability of nearby commercial uses to operate and develop. On the basis that no information to address such concerns, recommend refusal on these grounds.
- 7.6. With regard to contaminated land, the submitted Screening Assessment Form is not adequate for such a development and as a minimum a phase 1 desktop and site walkover survey is required by a suitably competent person. Conditions recommended to cover this.
- 7.7. **Highways:** No details of parking provided. No drawings submitted to evidence that required visibility splays are viable.
- 7.8. Focus on a sustainable eco-friendly development is applauded, but this does not preclude the need for practical understanding and assessment of the site.
- 7.9. Applicant has indicated they would expect a number of residents to work at Flaxby Business Park and that walking there would be appropriate. Pedestrian route to the Business Park is via an unlit bridleway and requires crossing the A59. This is an exceptionally busy arterial route and the promotion of the route as a pedestrian commute increases the risk to highway safety considerably.
- 7.10. Application focuses heavily on sustainable methods of travel. It includes mention of a potential bus service to the nearby Business Park but local highway authority (LHA) is under impression this doesn't currently exist and there's no evidence to show that it would include a route through Flaxby if it does begin soon. Planning documents for the Business Park indicate bus route would be funded for 1 year only, once the Park reaches 80% occupation. LHA does not consider this to be a viable alternative to car travel for residents of the proposed development.
- 7.11. Application also notes that a rail shunt will be included as part of the Business Park. LHA response to application for Business Park notes it was not considered a viable sustainable option for the site. Network Rail responded that it needed significantly more detail and that timetabling would be an issue if it was at all possible. No further information has been forthcoming from the developer regarding a rail link. LHA does not consider this to be a viable alternative to car travel for residents of this proposed development.
- 7.12. Only 6 bus services per day in each direction through Flaxby village. Timings of these buses not conducive to regular or commuter use. There are bus services that would take children to and from a few local schools.

- 7.13. Application refers to shared childcare and a pool car being available. In practice any informal childcare arrangements cannot be considered as part of a planning application. Assume 4 dwellings would house 16 people. Information required about the practicalities of one car for 16 people and how maintenance of shared items and land would be arranged and managed.
- 7.14. **MOD Safeguarding:** Site occupies statutory safeguarding zones surrounding RAF Linton-on-Ouse, in particular the aerodrome height, technical and birdstrike safeguarding zones. No safeguarding concerns at this stage but would like to be consulted at the next stage when further details are available.
- 7.15. **Yorkshire Water:** Conditions recommended if planning permission is to be granted.

Local Representations

- 7.16. 14 local representations have been received, all of which are objecting to the application. A summary of the comments is provided below, however, please see website for full comments.
- 7.17. Objections:
- Site not in the Local Plan. Flaxby is a settlement that Local Plan recognises should not be subject to enlargement or expansion. Conflicts with Local Plan Policies which direct development towards settlements, not the countryside.
 - Similar proposals previously dismissed at appeal. Nothing has changed with current application.
 - Significant increase in number of dwellings in a small village.
 - No services or facilities in the village, limited bus service and not possible to walk to, for example, schools, employment (including new business park), shops, health facilities, recreational amenities, therefore assume most residents would need to travel by car to access these.
 - Harm to character and appearance of village and landscape. Encroachment into countryside. Concerns that eco houses would look very different to existing properties in the village.
 - Proximity to commercial buildings nearby – how will noise and light pollution be mitigated? Site currently acts as a buffer to nearby industrial site.
 - Nearby houses have right to light and visual amenity.
 - Long period of disruption if 4 self-build houses not all built at the same time.
 - Additional vehicles. Site access on narrow road, close to blind bend. York Road already busy through Flaxby. Turning onto A59 is dangerous. No footpaths at site access or on opposite side of road.
 - Site and road in the immediate vicinity prone to flooding when it rains.
 - Impact on wildlife.
 - Loss of good agricultural land.
 - Additional pressure on infrastructure and services.
 - Benefits in terms of self-build don't outweigh the harm.
 - No need for new housing in this location – numerous large housing developments in nearby settlements.
 - Precedent for future development on nearby land if this application is approved.

- Impact on view from properties opposite, and on property values.

8.0 Environment Impact Assessment (EIA)

- 8.1. The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environment Statement is therefore required.

9.0 Main Issues

- 9.1. The key considerations in the assessment of this application are:
- Principle of development: Whether the site is a suitable location for the proposed development, having regard to the Local Plan growth strategy and to the accessibility of the site.
 - Flood risk and drainage
 - Housing mix
 - Character and appearance
 - Residential amenity
 - Highways
 - Agricultural land
 - Ecology and biodiversity
 - Contaminated land
 - Custom and self-build housing
 - Sustainable construction
 - Other Matters

10.0 ASSESSMENT

Principle of development: Whether the site is a suitable location for the proposed development, having regard to the Local Plan growth strategy and to the accessibility of the site

- 10.1. Comments received from the Parish Council and local residents regarding the site's location in the countryside and access to services and facilities are noted.

Local Plan growth strategy

- 10.2. Policy GS2 of the Local Plan sets out the Council's growth strategy for the area, and that the need for new homes and jobs will be met as far as possible by focusing growth within specific settlements, which are identified in the settlement hierarchy within Policy GS2.
- 10.3. Policy GS2 states that places not identified in the settlement hierarchy are considered to be part of the wider countryside, where development will only be appropriate if permitted by other policies of the Local Plan or a neighbourhood plan or national policy. This is echoed in Policy GS3.
- 10.4. The application site is on the edge of Flaxby, which is not an identified settlement within the settlement hierarchy in Policy GS2 and is therefore in the countryside. Accordingly, as set out in Policies GS2 and GS3, the application site is also in the

countryside, where development will only be supported where expressly permitted by other policies of the Local Plan or a neighbourhood plan or national planning policy.

- 10.5. Within the area covered by the Harrogate District Local Plan 2014-2035, the Council is currently able to demonstrate a deliverable housing land supply of 7.77 years (North Yorkshire Council Annual Housing and Employment Land Report (2022-2023), September 2023). Consequently, it is considered that the Council is able to meet its assessed housing need through the growth strategy and allocations in the Local Plan. In that context, there is no justification for supporting new housing development outside settlement development limits.
- 10.6. The submitted details indicate that the proposed development is intended to provide custom or self-build (CSB) housing. The supporting text to Local Plan Policy HS3, referring to CSB housing, indicates that CSB housing may be acceptable on small sites and sites on the edges of settlements in some instances. However, it does not state or imply that this will be the case in all circumstances. The policy and supporting text must be read in the context of the development plan as a whole, and it is necessary to consider other material planning considerations in determining whether the proposed development would be acceptable. Those other material considerations are assessed below with reference to relevant Local Plan policies and local and national policy and guidance.
- 10.7. The site is not in an area covered by a neighbourhood plan, and there are no other local or national planning policies which provide support for the development in the countryside proposed in this case. Therefore, the proposed development would conflict with the Council's growth strategy as set out in Policies GS2 and GS3 of the Local Plan.

Accessibility of the site

- 10.8. The Inspectors in the two previous appeal decisions noted that Flaxby is a small village without services or facilities. This remains the case.
- 10.9. There are bus stops in Flaxby, with services running to Boroughbridge in one direction and to Knaresborough in the other. However, the service is infrequent, with only six buses per day in either direction (and no services on Sundays) and, as noted by the Inspector in the second appeal on the site, 'would not therefore be especially convenient'. There is also understood to be a bus from the village which travels to two schools in Harrogate, with one service a day in each direction, according to the submitted details.
- 10.10. The Inspector in the second appeal decision stated that 'given the irregularity of the general bus services, residents at the appeal site would find it far more convenient to access day to day services via private vehicle and for a large number of trips, including those for work are likely to be reliant on such a requirement'. The situation in relation to bus services within the village has not changed since that decision. Therefore, it is still considered that occupants of the proposed development would be highly reliant on private vehicles to access services, facilities and employment.

- 10.11. The submitted documents refer to forthcoming development at Flaxby Green Park, including with reference to the provision of employment and facilities including a shuttle bus service and a rail halt.
- 10.12. However, the Flaxby Green Park site is around a mile away from the application site. There are no footways along York Road to the south of the site, and the pedestrian route between the site and Flaxby Green Park would be via an unlit bridleway and would require crossing the A59, described by Highways as 'an exceptionally busy arterial route'. Highways have therefore advised that 'the promotion of the route as a pedestrian commute increases the risk to highway safety considerably'.
- 10.13. With reference to development at Flaxby Green Park, the Inspector in the second appeal noted that 'the most convenient route to access that site without a vehicle would be along a secluded and unlit right of way and would also involve crossing the busy A59', and concluded that 'accessing that site on foot would not be an appealing prospect, particularly in the winter and in times of darkness and inclement weather'.
- 10.14. Therefore, having regard to the previous Inspector's conclusions and the concerns raised by Highways as part of this application, it is considered that it has not been demonstrated that convenient, safe or satisfactory pedestrian access would be possible between the site and any future employment opportunities and/or services or facilities at the Flaxby Green Park site.
- 10.15. Furthermore, Highways have expressed reservations about the sustainability of the bus service and deliverability of the rail halt referred to in relation to the Flaxby Green Park development, and it is considered that little weight can be given to these as viable alternatives to private vehicle use for residents of the proposed development.
- 10.16. Therefore, it is considered that little weight can be given to the suggestion that future occupants of the proposed development could practically or conveniently access future employment opportunities or amenities at Flaxby Green Park, or other such facilities further afield, other than by private vehicle.
- 10.17. The submitted documents indicate that an electric pool car and an electric bike would be provided for future occupants of the proposed development. However, very little information has been provided about how this would work in practice and, even if such provision was made, this would not preclude future occupants from owning or using their own private vehicles, nor is this something that could be controlled through the planning process.
- 10.18. The submitted details state that the design of the proposed development 'lends itself to shared child-care and community cohesion, to reduce the need for driving to nurseries'. However, no information has been provided to substantiate this statement and it is considered that little weight can be given to this suggestion. Furthermore, although reference has been made to the possibility of shopping deliveries being made via driverless vehicles or drones, no details have been provided in this regard or to indicate that such delivery facilities are available, or likely to become available, in the area. Therefore, little weight is given to the suggestion that such measures would reduce the likelihood of private vehicle use.

- 10.19. In the light of the above, it is concluded that the proposed development would not be in an accessible location with regard to services and facilities, and would therefore promote an unsustainable pattern of growth, with future occupants reliant on private vehicle use to access day to day facilities, employment etc. The development would therefore conflict with the Council's growth strategy, which seeks to concentrate new development in settlements with the services and facilities to support it.
- 10.20. This is consistent with the findings of the Inspectors' in the two recent appeals for similar development on the site, who concluded that 'by virtue of the site's low level of accessibility and the failure to justify that specific location, the appeal proposal clearly does not align with the area's spatial approach, objective and intent regarding growth to 2035 contained within Policy GS2' (first appeal), and that the proposal 'conflicts with policies GS2 and GS3...which promote a settlement hierarchy which broadly directs new housing towards settlements that are best placed to support it and not within the wider countryside which Flaxby is considered as under the plan' (second appeal).

Conclusion regarding principle of development

- 10.21. For the reasons given, it is concluded that the site is not a suitable location for the proposed development, having regard to the Local Plan growth strategy and to the accessibility of the site. The proposed development would therefore conflict with the requirements of Policies GS2 and GS3 of the Local Plan as set out above, and is considered unacceptable in principle.

Flood risk and drainage

- 10.22. Concerns raised by regarding flooding on the site and nearby are noted.
- 10.23. The site is in flood zone 1 with regard to river flooding. However, some areas in the north of the site are identified as being at risk of surface water flooding, including areas which are identified as being at high risk or medium risk of surface water flooding, and areas identified as being at low risk of surface water flooding. This is confirmed within the flood risk assessment (FRA) received as part of the application.
- 10.24. The proposed residential development would be a 'most vulnerable' development as defined in the flood risk vulnerability classification in Annex 3 of the NPPF.

Sequential test

- 10.25. Policy CC1 of the Local Plan states that development will only be permitted where it has an acceptably low risk of being affected by flooding when assessed through sequential testing.
- 10.26. The NPPF sets out the sequential approach to the location of development and states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Paragraph 162 of the NPPF states that development should not be permitted 'if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding', and

that 'the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding'.

- 10.27. The Planning Practice Guidance (PPG) states that the sequential approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. It states that this means 'avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding' (paragraph reference ID: 7-023-20220825).
- 10.28. The PPG states that 'the Sequential Test should be applied to 'Major' and 'Non-major development' proposed in areas at risk of flooding' (paragraph reference ID: 7-027-20220825). The proposed development, for up to 4 residential dwellings, would comprise 'non-major development' as defined in the PPG.
- 10.29. The PPG states that 'even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be applied' (paragraph reference ID: 7-023-20220825).
- 10.30. As set out above, and as acknowledged in the applicant's FRA, the application site includes areas identified as being at risk of surface water flooding, including areas at high risk and medium risk of surface water flooding, and areas at low risk. Accordingly, it is considered that a sequential test is required, consistent with the requirements set out in the NPPF and the PPG.
- 10.31. The requirement for a sequential test has been drawn to the attention of the applicant. However, no sequential test has been provided. Therefore, it has not been demonstrated that there are no reasonably available alternative sites which are at lower risk of flooding that could accommodate the development.
- 10.32. In the absence of a sequential test, the proposed development conflicts with the requirements of Policy CC1 of the Local Plan, and with the NPPF and the guidance in the PPG. It is therefore recommended that the application is refused on this basis.

Flood risk to the development and elsewhere

- 10.33. Policy CC1 and the NPPF also require applications to demonstrate that development proposals would be safe from flood risk for their lifetime, including access, without increasing flood risk elsewhere.
- 10.34. The submitted FRA states that 'surface water flood risk management measures have been incorporated in the proposed development's master plan' and that 'the proposed development incorporates significant areas of open ground through or within which surface water can flow'.
- 10.35. However, the application is in outline with all matters reserved, including layout. Therefore, it is not clear how or whether the development could accommodate 'significant areas of open ground' as well as the proposed houses and their associated parking, access and garden areas. The submitted indicative site layout

plan includes the footprint of at least one proposed house in the northern part of the site where the surface water flood risk is identified.

- 10.36. The submitted details also indicate that access to the proposed dwellings would be from the existing access track to the north. Therefore, it appears that the site access would pass through the area at risk of surface water flooding. However, no details have been provided as to how a safe access or escape from the site could be achieved in the event of a flood.
- 10.37. The submitted FRA also states that 'vulnerable development will be set at least 150mm above external ground levels, which will be designed to safely route overland flows away from buildings and towards the north of the site, using less vulnerable parts of the proposed development such as open spaces, parking areas and roads to convey and attenuate overland flows'.
- 10.38. However, the application is in outline and proposed levels information and detailed layout plans have not been received to indicate how this would be achieved.
- 10.39. Furthermore, the Environment Agency's (EA) standing advice, 'Preparing a flood risk assessment: standing advice', advises that 'finished floor levels should be a minimum of whichever is higher of 300mm above the: average ground level of the site; adjacent road level to the building; or estimated river or sea flood level'. It is not clear from the submitted details why the levels are proposed to be set only at least 150mm above external ground levels, and why the higher 300mm levels recommended in the EA's standing advice have not been incorporated.
- 10.40. Based on the information submitted and in the absence of detailed information to justify the lower levels proposed, it is considered that it has not been demonstrated that the proposed houses would be safe from flooding.
- 10.41. Yorkshire Water have noted that surface water is proposed to be drained to watercourse and advised that they 'fully endorse this means of surface water disposal'. The application form has also been ticked to say that surface water would be disposed of to sustainable drainage system. However, no details in this regard have been provided.
- 10.42. On the basis of the information submitted, and in the absence of detailed information to justify the proposed levels, or to demonstrate that the development would be safe at those levels or that a safe means of escape could be achieved from the site in the event of a flood, it is considered that it has not been demonstrated that the development would be safe from flood risk for its lifetime, including access, without increasing flood risk elsewhere.

Conclusion – Flood risk

- 10.43. In the absence of a sequential test, it has not been demonstrated that there are no reasonably available alternative sites in areas at lower risk of flooding which could accommodate the proposed development. Furthermore, based on the submitted

information it has not been demonstrated that the proposed development would be safe from flooding for its lifetime without increasing the risk of flooding elsewhere.

- 10.44. The proposed development would therefore conflict with the requirements of Local Plan Policy CC1, the NPPF and the PPG with regard to flood risk and the sequential approach to development.

Housing mix

- 10.45. Local Plan Policy HS1 states that housing developments should seek to deliver a range of house types and sizes that reflect and respond to the identified housing needs and demands of the district's households. It states that the mix proposed should have reference to the latest Housing and Economic Development Needs Assessment (HEDNA).
- 10.46. The submitted details indicate that two 3-bedroom houses and two 4-bedroom houses are proposed. This differs slightly from the housing mix recommended in the HEDNA. However, this is an outline application details of the proposed housing, including the sizes and mix, could be considered at reserved matters stage.

Character and appearance

- 10.47. Concerns raised regarding the effects of the proposed development on the character and appearance of the site and its surroundings are noted.
- 10.48. The site is part of an arable field on the edge of Flaxby. It is within Area 69 (East Knaresborough Arable Farmland) of the Harrogate Landscape Character Assessment (HLCA), which describes the area as 'a moderate to large-scale area with undulating landform covering 22km² of arable land'. The HLCA states that the settings of villages in the area 'are important to the diversity of the landscape and are sensitive to change resulting from domestication of village fields', that 'the field pattern close to villages often provides an intimate setting amidst intensive arable land', and that 'changes to garden extent and garden boundaries will impact upon this setting.' An identified aim for Area 69 in the HLCA is to preserve and enhance the rural pastoral and historic setting of villages.
- 10.49. In the second appeal decision, which related to the same part of the existing field as the current application, the Inspector commented that 'whilst noting the linear pattern of the village, the field makes a significant positive contribution to the setting and therefore character and appearance of Flaxby'. They went on to state that 'it is very important as it assists in providing the village with visual and functional separation from the rather commercial and large Chippindale and Morrisons buildings further to the southwest' and that it 'assists in enabling Flaxby to be read as a rural village set amongst farmland, despite the close presence of the aforementioned units and the heavily trafficked A59.'
- 10.50. The Inspector in the first appeal, which related to a larger area of land but included the current application site, commented that the site's 'positioning on the settlement edge and agricultural appearance mean that it presents as part of the surrounding

countryside and contributes positively to the character and appearance of the street scene.'

- 10.51. Given its existing use and appearance, as part of an arable field on the edge of a village with other fields to the south and west, and having regard to the previous Inspectors' comments above, it is considered that the site appears as part of the countryside which surrounds and forms part of the distinctive rural setting of the small village of Flaxby. As noted by the second appeal Inspector, it also contributes to the sense of visual and physical separation and distinction between this small rural village and the large commercial buildings to the south, and thus makes a positive contribution to protecting the distinctive rural character of Flaxby.
- 10.52. The current application proposes one dwelling fewer than the previous application. Nonetheless, it is still considered that the development of housing on the site would significantly and adversely alter the character and appearance of the site. The houses themselves, together with their vehicular access and parking areas, gardens and associated paraphernalia such as outdoor furniture, washing lines etc, would result in a uncharacteristically domestic form of development that would fail to preserve the site's existing rural pastoral character and appearance, and would erode the setting and distinctive character of the village and the sense of separation between the village and the commercial buildings to the south. It would therefore also fail to preserve the landscape character of the area.
- 10.53. The Inspector in the second appeal commented that 'the development of dwellings at this site, even below the maximum proposed of five, would work very much against the landscape objectives for the area even were the hedge around the site to be retained.' Taking this into account, and for the reasons above, it is considered that the proposed development of up to 4 houses on the site would still result in significant harm to the character and appearance of the area.
- 10.54. Furthermore, although the submitted details refer to a proposed design code for the dwellings, very little information has been provided in this regard. Consequently, it is not clear how the parameters for the design and detailing of the proposed dwellings would be established or secured, to ensure that they would be sympathetic to local character.
- 10.55. For the reasons given, it is concluded that the proposed development would have a significant adverse effect on the character and appearance of the site and its surroundings, including the setting of Flaxby and the character of the wider landscape. It would therefore conflict with Policies HP3 and NE4 of the Local Plan which require development to respect the spatial qualities of the local area, protect landscape character and local distinctiveness, and respect the distribution and form of settlements and buildings in their landscape setting. It would also conflict with the aims of the HLCA and with the NPPF, which states that planning decisions should ensure that developments will function well and add to the overall quality of the area, and are sympathetic to local character, including landscape setting.

Residential amenity

- 10.56. Concerns raised regarding the amenity of existing neighbouring residents, and of potential future occupants of the proposed development, are noted.
- 10.57. The application is in outline, with all matters reserved. Matters relating to the scale, layout and appearance of the proposed houses and their location within the site and in relation to one another and to existing neighbouring houses would need to be considered and assessed as part of a reserved matters application. However, based on the site's location in relation to the nearest neighbouring houses to the north and east, it is considered that it would be possible to achieve appropriate separation distances between the proposed development and those neighbouring properties to ensure that the amenities of neighbouring residents would be protected with regard to privacy, outlook and light.
- 10.58. Given the limited scale of the proposed development, it is likely that any construction period would be relatively short-lived, even if the 4 houses were not all built at the same time. Matters such as hours of construction could be controlled by planning condition if permission was to be granted. Therefore, it is considered that refusal on these grounds could not be justified.
- 10.59. The matter of whether the proposed houses and gardens would be of a sufficient size to provide appropriate levels of amenity for their future occupants would need to be considered as part of a reserved matters application.
- 10.60. There is a small group of existing commercial/industrial buildings near the junction of the A59, around 270m from the southern boundary of the site at their closest point. The environmental health officer (EHO) has raised concerns that introducing the proposed houses close to those nearby commercial uses would impact on the future occupants of the proposed development and on the ability of those existing commercial uses to operate and develop. No noise impact assessment has been submitted as part of the application and, on the basis that they have no information to address the concerns raised, the EHO has recommended refusal of the application on the grounds of amenity loss from noise breakout on the future occupants of the development, and negative impact on the nearby industrial/commercial activities and their ability to grow.
- 10.61. Given the relative proximity of those commercial units to the site, and in the absence of a noise impact assessment, it is considered that insufficient information has been received to allow the existing noise environment, and the potential implications for future occupants of the proposed development, to be understood or considered. It has therefore not been demonstrated that a satisfactory level of amenity for future occupants could be provided, including within the proposed houses themselves as well as their external garden areas.
- 10.62. The proposals would therefore conflict with Policy HP4 of the Local Plan, which states that development proposals should be designed to ensure that they will not result in significant impacts on the amenity of occupiers, including with regard to noise. The proposals would also conflict with the NPPF, which requires developments to create places with a high standard of amenity for existing and future users.

Highways

- 10.63. Concerns raised regarding highway and pedestrian safety are noted.
- 10.64. Taking into account the small scale of the scheme, it is considered that additional vehicle movements would be unlikely to have significant implications for the operation of the local highway network. However, as set out above, it is considered that the site is in an inaccessible location and that the lack of alternatives to private car use, including lack of safe pedestrian routes to facilities and amenities, mean that the development would promote an unsustainable pattern of growth, in conflict with the Council's growth strategy.
- 10.65. The application is in outline with all matters reserved, including access, although the submitted plans indicate that access to the development would be via the existing access track to the north of the site. Highways have recommended conditions relating to the provision of appropriate visibility splays at the site access and requiring further details regarding measures to provide access and parking, including cycle parking, and turning facilities for vehicles within the site. These matters would need to be considered as part of a reserved matters application and conditions requiring those details as part of a reserved matters application could be attached if outline permission was granted.
- 10.66. Concerns have been raised regarding disruption during the construction of the proposed dwellings. Highways have recommended a condition requiring a construction management plan, including details of access construction vehicles and the provision of wheel washing facilities and areas for the storage of materials on-site. Given the scale of the development, and subject to such a condition, it is considered that any effects in this regard could be satisfactorily mitigated.
- 10.67. It is therefore concluded that the proposed development would not have adverse implications for highway safety and would not conflict with the NPPF in that regard.

Agricultural land

- 10.68. Concerns raised regarding the proposed development of agricultural land are noted.
- 10.69. Local Plan Policy NE8 states that the best and most versatile agricultural land (BMV) (grades 1, 2 and 3a) will be protected from development not associated with agriculture or forestry except where it can be demonstrated to be necessary.
- 10.70. Paragraph 174 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by 'recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land.'
- 10.71. The site is classified as Grade 2 land (Very Good). No information has been submitted as part of the current application with regard to the site's agricultural land classification or the requirements of Policy NE8.

- 10.72. The Inspectors in both previous appeals concluded that compliance with this policy had not been demonstrated. In the most recent appeal, the Inspector stated that, whilst they noted the 'positive contribution' of custom and self-build housing provision, 'the submitted evidence nor anything at the hearing clearly demonstrates that the development of this particular site for the proposal would be necessary.' They went on to conclude that 'whilst in the context of food and other resource production the loss would be small given the size of the site, the supporting text makes it clear that the Policy is there to protect BMV, acknowledging that this land is often in close proximity to settlements where development pressure is greatest. There is therefore conflict with Policy NE8 of the HLP'.
- 10.73. The proposal would result in the loss of Grade 2 agricultural land. On the basis of the information submitted and in the light of the previous Inspectors' conclusions, it is considered that the proposed development has not been demonstrated to be necessary in this location and that the loss of agricultural land has therefore not been justified. The proposals would therefore conflict with the requirements of Local Plan Policy NE8 and the NPPF as set out above.

Ecology and biodiversity

- 10.74. Concerns raised regarding the impacts of the proposed development on wildlife are noted.
- 10.75. No Ecological Assessment has been received as part of the application. However, an Ecological Statement submitted as part of the previous outline application for up to 9 houses, which related to a larger area of land but which included the current application site, identified that a number of protected species may use habitats on or adjacent to that site, including bats, birds and great crested newts, with reference to the presence of hedgerows and ponds in the vicinity.
- 10.76. That previous Ecological Statement concluded that an extended Phase 1 habitat survey was required to confirm the species-specific surveys that would be required but anticipated that a number of surveys and assessments 'may be required to accompany the planning submission for the site', including bat surveys and surveys of the water bodies within 500m to determine if populations of great crested newt were present.
- 10.77. The Inspector in the first appeal decision noted that 'the appellant's Ecology Statement states that the effect on protected species interests requires further survey work and no site specific mitigation measures have been provided'. They went on to state that 'in light of insufficient evidence to the contrary, these matters cannot be adequately dealt with by way of a planning condition and the submission of further details at the reserved matters stage'. The Inspector therefore concluded that 'it has not been adequately demonstrated that the appeal proposal would not harm local ecological interests, with particular regard to protected species and achieving net biodiversity gain.'
- 10.78. In this case, the proposal for up to 4 dwellings is below the threshold at which it is required to demonstrate that the proposals would achieve 'no net loss' of biodiversity as set out in part e) of Local Plan Policy NE3.

- 10.79. However, with regard to protected species, Government Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact Within the Planning System, states ‘it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision’. It goes on to state that ‘the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances’, and that where there is ‘a reasonable likelihood’ of protected species being present and affected by the development, such surveys should be completed before permission is granted.
- 10.80. In the light of the ecological statement provided as part of an earlier application for land which included the current application site, and having regard to the characteristics of the site including surrounding hedgerows, and the presence of ponds in the vicinity, it is considered that there is a reasonable likelihood of protected species being present and affected by the proposed residential development.
- 10.81. Therefore, and having regard to the guidance in Circular 06/2005, it is considered that it would not be appropriate to deal with the submission of further surveys by condition. In the absence of detailed surveys in that regard, it is considered that it has not been demonstrated that the proposed development would not have an adverse effect on ecology and biodiversity, including protected species, or that any potential impacts could be satisfactorily mitigated.
- 10.82. It is therefore considered that the proposals would conflict with Policy NE3 of the Local Plan, which requires proposals to protect and enhance features of ecological interest, including protected species. The development would also conflict with the guidance in Circular 06/2005 as set out above, and with the NPPF which states that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on biodiversity.

Contaminated land

- 10.83. The EHO has advised that the screening assessment submitted with the application is not adequate for the proposed development, and that as a minimum a phase 1 desktop and site walkover survey is required with regard to contaminated land. However, the EHO has confirmed that, in this case, the matter which can be dealt with via conditions requiring the submission of the relevant surveys (and further information and/or remediation strategies as necessary). On that basis, it is not considered that the proposals would conflict with the requirements of Local Plan Policy NE9 with regard to contaminated land, or that this should form a reason for the refusal of the application.

Custom and self-build housing

- 10.84. The submitted details state that the proposed development is intended to provide custom and/or self-build (CSB) housing. The applicant’s Planning Statement advises

that 'a Unilateral Undertaking will be entered into to ensure the houses are Custom Self Build'. To date, no Unilateral Undertaking (UU) has been received.

- 10.85. The Council has a duty under the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning act 2016) to keep a register of individuals and associated individuals who are seeking to acquire plots for self-build and custom housebuilding in their area, and to give suitable development permission for enough serviced plots of land to meet the demand identified.
- 10.86. The Council's Planning Policy officer has confirmed that, in the area covered by the Harrogate Local Plan, the most recent published position in this regard is set out in the Harrogate Borough Council Self-build and Custom Housebuilding Update Report (published January 2023) (the CSB Report).
- 10.87. The monitoring of CSB plots is based on annual 'Base Periods'. The CSB report concluded that, at the end of the Base Period ending 30th October 2022, there was a shortfall of 60 in the number of permissions granted compared with the demand identified to be met before the end of that Base Period. The CSB report anticipated a shortfall of 89 plots by the end of the Base Period ending 30th October 2023.
- 10.88. It is therefore acknowledged that there is currently a shortfall in the number of permissions granted for CSB plots compared to the identified demand for such plots.
- 10.89. This matter was considered by the Inspectors in both of the previous appeals on the site, taking into account submissions from the Council as well as demand data provided by the applicant (and Unilateral Undertakings which had been submitted by the appellant to secure the housing as CSB). In both appeals, the Inspectors concluded that the contribution that the proposed development would make towards CSB was 'a benefit of significance' and carried 'substantial weight in favour of the appeal proposal,' but that this did not outweigh the harm identified in either case.
- 10.90. In the context set out above, the delivery of up to 4 CSB units would be a benefit weighing in favour of the proposed development. This matter is considered further in the Planning Balance section below.

Sustainable construction

- 10.91. The submitted details indicate that the proposed houses would be Passivhaus certified, and refer to measures including photovoltaic panels, air source heat pumps, and measures to reduce energy demand and water consumption.
- 10.92. The Inspector in the second appeal stated that 'the pursual of Passivhaus principles and other sustainable design credentials can be afforded some positive weight but this would be very limited by reason of the very small scale of the scheme'.
- 10.93. The development now proposed is for one house fewer than that previous appeal and therefore remains very small in scale. Accordingly, and having regard to the previous Inspector's conclusions, whilst references to Passivhaus and sustainable construction measures are noted and would be a benefit weighing in favour of the proposed development, it is considered that the weight that can be afforded to the benefits in

this regard is very limited. This is considered further in the Planning Balance section below.

Other matters

- 10.94. The submitted Planning Statement makes reference to 'Flaxby Village Community Interest Company ("the Company")', and states that 'upon planning approval some land will be gifted to the Company to be for the benefit of all of the residents of the village of Flaxby'. It states that this would be secured by Unilateral Undertaking. The Planning Statement goes on to state that 'this might be a playground for example, but the approval for that would be subject to a separate planning application that does not form the subject matter of this application'.
- 10.95. The current application seeks outline planning permission for a development described as 'up to 4 eco-custom self build homes with all matters reserved'. It does not refer to any other proposed uses or development, and therefore no such other uses or development have been considered as part of the application. The information in this regard is limited, beyond that set out in the Planning Statement as referenced above. Furthermore, as the development has received significant local objection and no local support, the view that this gifted land and development would be 'for the benefit of all of the residents of the village of Flaxby' has to be questioned.
- 10.96. In any event, although a UU has been referred to in this regard, planning obligations such as may be included within a UU may only constitute a reason for granting planning permission (and thus be taken into account in the consideration of an application for planning permission) if they meet the tests in the Community Infrastructure (CIL) Regulations, which are repeated in paragraph 57 of the NPPF. Specifically, planning obligations 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.
- 10.97. In this case, the development is for up to 4 dwellings. It is therefore below the thresholds at which the provision of, or contributions towards, open space would be sought or required in accordance with Local Plan Policy HP7 and the Harrogate Provision of Open Space and Village Halls SPD. Accordingly, the provision of open space for a scheme of the scale proposed would not be necessary to make the development acceptable in planning terms. Nor would it be fairly and reasonably related in scale and kind to the development. Consequently, even if a UU had been received in relation to the provision of open space as indicated, a planning obligation to that effect would not meet the legal tests in the CIL Regulations and therefore could not be taken into account or given weight as part of the consideration of this application.
- 10.98. Concerns have been raised regarding that applications may come forward for similar development if this application was approved. The application is recommended for refusal. However, any future application that may be submitted would be considered on its own planning merits and on the basis of the specific circumstances in that case.

- 10.99. Matters relating to private views and property values are not material planning considerations and cannot be given weight in the consideration of the application.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1. As set out above, it is considered that the site, which is in the countryside outside settlement development limits, is not a suitable location for the proposed development having regard to the Council's growth strategy and to the site's accessibility to services and facilities. The proposed development is therefore considered to be unacceptable in principle.
- 11.2. For the reasons given it is also concluded that the proposed development would result in significant harm to the character and appearance of the site and its surroundings, and in the unjustified loss of Grade 2 agricultural land.
- 11.3. In the absence of a sequential test, it has not been demonstrated that there are no reasonably alternative sites at lower risk of flooding that could accommodate the proposed development. Nor has it been demonstrated that the development would be safe from flood risk for its lifetime without increasing flood risk elsewhere, based on the information submitted.
- 11.4. Furthermore, it is considered that insufficient information has been submitted to demonstrate that the proposed development would provide a satisfactory level of amenity for future occupants with regard to the potential for noise from nearby commercial units, or that the development would not have an adverse impact on ecology and biodiversity, including with regard to protected species.
- 11.5. The proposed development would therefore conflict with relevant Local Plan policies, SPDs and national planning policy and guidance in those regards, as detailed above.
- 11.6. The proposed development would provide up to 4 new dwellings, which would contribute to the supply of housing in the area. However, within the area covered by the Harrogate District Local Plan 2014-2035, the Council is currently able to demonstrate a deliverable housing land supply of 7.3 years. In that context, and given the very small scale of the proposed development, the benefits in that regard would be very modest and, it is considered, can be afforded only limited weight.
- 11.7. The proposed development would provide up to 4 CSB plots and would thus contribute towards meeting the demand for CSB plots in the area, in the context of an acknowledged shortfall in permissions in that regard. As such, the delivery of those plots would be a benefit. However, the submitted details provide only relatively general information regarding the proposed plots and do not set out specific plot requirements or confirm what would be provided as part of a serviced plot for sale. Furthermore, no mechanism has been provided to secure the provision and retention of the proposed CSB plots by way of a UU or s106 agreement. Therefore, the weight afforded to the proposed CSB plots is limited based on the details submitted.
- 11.8. Notwithstanding this, even if further information regarding the nature of the proposed plots and a suitable mechanism to secure their provision and retention was provided,

and even if substantial weight was afforded to the proposed CSB plots as a benefit, consistent with the weight afforded by the Inspectors in the two previous appeal decisions on the site, the benefits of the 4 CSB plots proposed would not outweigh or justify the significant harm that would arise as a result of the development.

- 11.9. This is consistent with the conclusions of the previous Inspectors, including the Inspector in the most recent appeal for up to 5 dwellings, who concluded that ‘given the position within the borough in relation to CSB, I am able to afford substantial weight in favour of the proposal with regard to such provision which could be up to 5 dwellings. However, this matter, nor the design credentials of the dwellings would outweigh the harm identified’.
- 11.10. As set out above, although references to Passivhaus and sustainable construction methods are noted and would be a benefit in favour of the scheme, it is considered that very limited weight can be afforded to the benefits in this respect, having regard to the very small scale of the scheme.
- 11.11. For the reasons given, it is concluded that the benefits of the proposed development, even taken cumulatively, would not outweigh the significant harm that has been identified as a result of the proposals. Therefore, even taking into account the suggested benefits put forward, the proposed development is considered unacceptable, and it is concluded that the proposed development would conflict with the development plan taken as a whole and, consequently that it would not comprise sustainable development in the terms of the NPPF.
- 11.12. Other material considerations do not indicate that a decision should be taken other than in accordance with the development plan. It is therefore recommended that permission is refused.

12.0 RECOMMENDATION

12.1 That planning permission be REFUSED for the following reasons:

- i. The proposed development would be outside the development limits of any settlement, as defined in Policy GS2 and GS3 of the Harrogate District Local Plan 2014-2035 (the Local Plan), and would therefore be in the countryside. Consequently, and also having regard to its accessibility in relation to services and facilities, the site would not be an appropriate location for the proposed development, and would promote an unsustainable pattern of growth and travel, contrary to the Council’s growth strategy and Policies GS2 and GS3 of the Local Plan.
- ii. Parts of the site are at risk of surface water flooding. No sequential test has been submitted as part of the application. Therefore, it has not been demonstrated that there are no reasonably available alternative sites appropriate for the proposed development that would be at lower risk of flooding, contrary to Policy CC1 of the Local Plan, the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG).

- iii. On the basis of the submitted information, it has not been demonstrated that the proposed development would be safe from all sources of flooding for its lifetime without increasing flood risk elsewhere. The proposed development would therefore be contrary to Policy CC1 of the Local Plan, to the NPPF and to guidance in the PPG.
- iv. The proposals would result in the encroachment of domestic development into the countryside on the edge of Flaxby, on an undeveloped agricultural field which contributes to the rural character and landscape setting of the village. The proposals would therefore result in a visually intrusive and incongruous development that would significantly detract from the character and appearance of the site and its surroundings, including the setting of the village and the character of the wider landscape. The proposal would therefore be contrary to Policies HP3 and NE4 of the Local Plan, and to the Harrogate Landscape Character Assessment and the NPPF.
- v. On the basis of the information submitted, it has not been demonstrated that a satisfactory level of amenity for future occupants of the proposed houses could be achieved with regard to the potential for noise from nearby commercial units, including within the proposed houses themselves as well as their external garden areas. The proposed development would therefore be contrary to Local Plan Policy HP4 and to the NPPF.
- vi. On the basis of the information submitted, it has not been demonstrated that the proposed development would not have an adverse impact on biodiversity, including with regard to protected species. The proposed development would therefore be contrary to Policy NE3 of the Local Plan, to the guidance in Government Circular 06/2005, and to the NPPF.
- vii. The site is identified as Grade 2 (Very Good) agricultural land, and the submitted information fails to demonstrate the need for residential development in this location. The proposals are therefore contrary to Policy NE8 of the Local Plan and to the NPPF.

Target Determination Date: 18.12.2023

Case Officer: Jillian Rann – jillian.rann@northyorks.gov.uk

Appendix A – Appeal decision: Application 22/02517/OUT for up to 5 eco-custom self build homes (appeal reference: APP/E2734/W/22/3307127).



Appeal Decision

Hearing Held on 21 February 2023

Site visit made on 21 February 2023

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal Ref: APP/E2734/W/22/3307127

Woodland View, York Road, Flaxby HG5 0RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Ben Holmes (Holmes Planning Ltd) against the decision of Harrogate Borough Council.
 - The application Ref 22/02517/OUT, dated 24 June 2022, was refused by notice dated 25 August 2022.
 - The development proposed is outline application for up to 5 eco-custom self build homes with all matters reserved.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Harrogate Borough Council against Mr Ben Holmes (Holmes Planning Ltd). This application is the subject of a separate Decision.

Main Issues

3. The first main issue is whether the site is suitable for the proposed development having regard to accessibility to services and facilities. The second is the effect of the proposal on the character and appearance of the area.
4. The third is the contribution that the proposal would make to the provision of plots for self-build and custom housebuilding having regard to the supply of and demand for such sites within the area for such housing. The fourth is whether the loss of Grade 2 Agricultural Land is justified.

Reasons

Accessibility to services and facilities

5. Flaxby is a small village without services and facilities that is set to the north of the A59 and to the west of the A1(M). Consequently, future residents of the dwelling/s would have to look further afield for their day-to-day requirements. This issue was discussed at the Hearing. Some requirements could be met at other villages including Goldsborough while other services are available within Knaresborough, Harrogate and Boroughbridge.

6. The evidence does indicate that there is a bus stop within the village from where services operate in one direction towards Boroughbridge and in the other towards Knaresborough with calls at intermediate destinations on both routes.
7. However, these services are not regular with six services per day in either direction. The irregular services would not therefore be especially convenient. I was also made aware of a bus service serving primary school children linking the village with the primary school in Goldsborough and the evidence details a bus which serves the Harrogate high schools.
8. However, given the irregularity of the general bus services, residents at the appeal site would find it far more convenient to access day to day services and facilities via private vehicle and for a large number of trips, including those for work are likely to be reliant on such a requirement, despite my attention being drawn to a small number of jobs being available at Chippindales.
9. My attention has been drawn to the large amount of pending development at Flaxby Green Park, including a rail halt. However, the most convenient route to access that site without a vehicle would be along a secluded and unlit right of way and would also involve crossing the busy A59.
10. Accessing that site on foot would not be an appealing prospect, particularly in the winter and in times of darkness and inclement weather. I appreciate that electric vehicle infrastructure would be included within the development, but that would not provide any compulsion for a future resident/s to use such a vehicle.
11. As a result of the above matters, the proposal therefore conflicts with policies GS2 and GS3 of the Harrogate Local Plan (2020) (HLP) which promote a settlement hierarchy which broadly directs new housing towards settlements that are best placed to support it and not within the wider countryside which Flaxby is considered as under the plan.

Character and appearance

12. The appeal site forms the eastern part of a small arable field on the western side of York Road on the edge of Flaxby. The site is bounded by a hedgerow fronting York Road. There are houses opposite and the site is separated from housing to the north by an access track.
13. Whilst noting the linear pattern of the village, the field makes a significant positive contribution to the setting and therefore character and appearance of Flaxby. It is very important as it assists in providing the village with visual and functional separation from the rather commercial and large Chippindale and Morrisons buildings further to the southwest. It assists in enabling Flaxby to be read as a rural village set amongst farmland, despite the close presence of the aforementioned units and the heavily trafficked A59.
14. The site is included within Area 69 (East Knaresborough Arable Farmland) of the Landscape Character Assessment¹. In relation to sensitivities and pressures it sets out that the settings of the villages are important to the diversity of the landscape and are sensitive to change resulting from domestication of village fields or enlargement of fields.

¹ Harrogate District Landscape Character Assessment February 2004.

15. The Council considered that this site could form a village field at the Hearing, and whilst I noted the appellants point that there had been no specific appraisal of this site, the development of dwellings at this site, even below the maximum proposed of five, would work very much against the landscape objectives for the area even were the hedge around the site to be retained.
16. The proposal would therefore result in clear and significant harm to the character and appearance of the area. It would subsequently conflict with policies HP3 and NE4 of the HLP which amongst other things require that development should respect the spatial qualities of the local area and which seek to resist development which would harm the setting of a settlement.

Self-build and custom housebuilding

17. The Council has a duty under the Self Build and Custom Housing Act 2015 (as amended by the Housing and Planning Act) to keep a register of persons who are interested in acquiring a self-build or custom-build (CSB) plot, and to also grant enough suitable planning permissions for such serviced plots to meet this demand.
18. This matter was the subject of extensive submissions by both the Council and the appellant both in written evidence prior to the Hearing and on the day of the Hearing itself.
19. However, in any event, the Council accept that there is a shortfall in the provision of CSB plots within the district. At the Hearing, they identified the shortfall as 89. The appellant felt that the shortfall was far greater, at somewhere between 287 and 337 having undertaken a detailed analysis of previous permissions previously identified as CSB by the Council.
20. On the basis of the evidence and discussion at the Hearing, I consider it likely that a number of those previous permissions could not be with confidence identified as CSB. Whilst it would be very difficult to pin down an exact figure, the shortfall could well be towards the appellants, rather than the Council's figures. I also acknowledge the demand identified within the borough and local area through secondary data sources drawn to my attention by the appellant.
21. The potential contribution in CBS (which would be secured through a Unilateral Undertaking) is therefore a benefit of significance carrying substantial weight in favour of the appeal proposal.
22. My conclusion with regard to this matter is the same as a previous inspector when considering a previous appeal at the site for up to 9 eco custom self-build homes².

Agricultural land

23. The appeal site is classified as best and most versatile agricultural land (BMV) - Grade 2 land (Very Good). It was heard at the Hearing that the land is on general arable land rotation and once accommodated the village strawberry field. Policy NE8 of the Local Plan states that best and most versatile agricultural land, including Grade 2, will be protected from development not associated with agriculture or forestry except where it can be demonstrated to be necessary.

² APP/E2734/W/22/3293545.

24. Whilst I take note of the positive contribution as a result of CSB provision above, the submitted evidence nor anything at the Hearing clearly demonstrates that the development of this particular site for the proposal would be necessary.
25. Whilst in the context of food and other resource production the loss would be small given the size of the site, the supporting text makes it clear that the Policy is there to protect BMV, acknowledging that this land is often in close proximity to settlements where development pressure is greatest. There is therefore conflict with Policy NE8 of the HLP.

Planning policy context

26. I consider the most important policies are GS2, GS3, NE4, NE8, HS3 and HP3 of the HLP. The Policies have been referenced above in the report, except for Policy HS3.
27. This Policy relates to self and custom build housing. I accept that the Council appears to place a large degree of stock in meeting its CSB requirement on strategic sites of 500 dwellings or more where a CSB requirement of 5% will be required.
28. Whilst I acknowledge the appellant's concerns over whether the demand for CSB can be delivered through this measure, the Policy represents a route to alleviate the CSB shortfall and nothing within the evidence convinces me that it would be as ineffective as the appellant claims. Furthermore, the policy does not rule out the provision of CSB on suitable small sites and single plots on infill sites and sites on the edges of settlements.
29. I therefore do not consider Policy HS3, nor Policy GS3 including its development limit approach to be out of date. There is nothing to indicate that the other most important policies are out of date, and these relate to core planning principles relating to location of development, the character and appearance of an area and the protection of landscape character.

Other Matters

30. The pursual of Passivhaus principles and other sustainable design credentials can be afforded some positive weight but this would be very limited by reason of the very small scale of the scheme.
31. The appellant has drawn many appeal decisions to my attention. The Kingsdown and Ledbury appeals³ relate to the provision of CSB dwellings outside of a settlement boundary, although the characteristics of those sites appear to differ significantly from that before me. I therefore afford these matters limited weight.
32. Within the Gamlingay appeal⁴ the provision of CSB appears to have weighed heavily in favour of the development and within the Colney Heath, Whittington, Caxton Steventon and Pannal appeals⁵, substantial weight was afforded to the provision of CSB. In a similar manner to those cases I have afforded

³ APP/X2220/W17/3176895 & APP/P1615/W/18/3213122.

⁴ APP/W0530/W/19/3230103.

⁵ APP/B1930/W/20/3265925, APP/H1840/W/20/3255350, APP/W0530/W/21/3282234, APP/V3120/W/20/3265465 & APP/E2734/W/20/3259171.

substantial weight in favour of the appeal proposal as a result of its CSB offering and the CSB situation within the borough.

33. The Woodville, Melton and Corsham appeals⁶ raised issues of doubt as to whether other permissions would indeed be CSB. I have reached a similar conclusion above in that some previous permissions may not be with confidence identified as CSB.
34. The situation within this appeal by the presence of Policy HS3 of the HLP differs from that within the cited Droitwich appeal⁷ where the development plan appeared to lack reference to CSB and in the Kidderminster appeal⁸ where there were no relevant development plan policies relating to CSB. I afford these matters limited weight.
35. I acknowledge the position within the Marton Le Moor appeal⁹ where it notes that a five-year housing land supply would not form a ceiling. The Chorley appeal¹⁰ suggests that secondary data sources can be taken into consideration, and I have done so within this appeal.

Planning Balance and Conclusion

36. The proposal would not encompass a sustainable pattern of growth given that residents would be likely to be reliant on less sustainable modes of transport and this would be against the development strategy for the area. The proposal would result in significant harm to the character and appearance of the area. The proposal would result in the loss of best and most versatile agricultural land which is not demonstrated to be necessary.
37. Given the position within the borough in relation to CSB, I am able to afford substantial weight in favour of the proposal with regard to such provision which could be up to 5 dwellings. However, this matter, nor the design credentials of the dwellings would outweigh the harm identified.
38. I consider that the basket of most important policies is not out of date in this case. Moreover, even if I were to agree with the appellant that the basket of most important policies were out of date, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development would not apply.
39. There is nothing, including the Framework¹¹ to indicate that the decision should be made otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR

⁶ APP/G2435/W/18/3214451, APP/X3540/W/21/3276418 & APP/Y3940/W/19/3243873.

⁷ APP/H1840/W/19/3241879.

⁸ APP/R1845/W/21/3284761.

⁹ APP/E2734/W/18/3201820.

¹⁰ APP/D2320/W/20/3247136.

¹¹ National Planning Policy Framework 2021.

Documents submitted at Hearing

-Plans and Land Registry Documents relating to other sites by Appellant.

Documents submitted after Hearing

-Further comments by Council and Appellant regarding dating of development plan policies.

Appendix B – Appeal decision: Application 21/04716/OUT for up to 9 eco custom self-build homes (appeal reference: APP/E2734/W/22/3293545)



Appeal Decision

Site visit made on 25 April 2022

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 May 2022

Appeal Ref: APP/E2734/W/22/3293545

Woodland View, York Road, Flaxby HG5 0RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Ben Holmes of Holmes Planning Ltd against the decision of Harrogate Borough Council.
 - The application Ref 21/04716/OUT, dated 27 October 2021, was refused by notice dated 28 January 2022.
 - The development proposed is described as a development of up to 9 eco custom self-build homes with all matters reserved.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs against the Council was made by the appellant and is the subject of a separate Decision.

Preliminary Matters

3. The planning application was made in outline with all matters reserved for future consideration. A change to the description of development was agreed during the determination period to clarify this and is reflected in the above heading. The appeal has proceeded accordingly, and any details shown on the plans have been treated as illustrative.
4. An executed Unilateral Undertaking ("the UU") dated 22 February 2022 has been submitted in respect to several planning obligations. The necessity and appropriateness of the UU is addressed later in my Decision.

Main Issues

5. The main issues for this appeal are:
 - whether or not the appeal proposal is suitably located, with particular regard to the development plan's spatial strategy and site accessibility
 - the effect of the appeal proposal on the character and appearance of Flaxby and its setting
 - the contribution the appeal proposal will make to meeting local housing needs, with particular regard to the supply of custom and self-build plots, affordable housing and the range of units

- whether or not the appeal proposal represents the effective use of land, with particular regard to density and the supply of best and most versatile land
- the effect of the appeal proposal on local ecological interests, with particular regard to protected species and achieving net biodiversity gain
- whether or not there is adequate necessary local infrastructure capacity to support the appeal proposal, with particular regard to village hall and open space provision.

Reasons

Location

6. The Harrogate District Local Plan (“the Local Plan”) seeks to direct development to those parts of the area which are capable of supporting growth and provide good levels of accessibility to services and facilities. The appeal site comprises a field which adjoins the built up framework of Flaxby. This is a small village with an absence of services and facilities. The appeal site is located outside of the development limits which are defined by the Local Plan, thereby constituting countryside for the purpose of interpreting planning policies.
7. Consequently, the appeal site falls beyond the locations identified in the Local Plan as being suitable to support sustainable housing growth. However, the appeal site is located within a short walking distance to the local bus service and my attention has been drawn to several existing and proposed local employment sites in the vicinity. Nonetheless, the submitted evidence does not adequately demonstrate good levels of accessibility by public transport. The nature of the local highway and the distances involved makes walking a more unattractive and potentially hazardous option. Neither has a match between the occupants of the appeal scheme and those local employment opportunities been demonstrated.
8. Despite the increase in the availability of online services, the appeal proposal would necessitate residents to regularly travel elsewhere or rely on deliveries to access services and facilities to meet even their most basic daily needs. Consequently, it is very likely that the appeal scheme’s occupants would rely heavily on transportation by motor vehicle. An electric vehicle infrastructure strategy for the appeal scheme could be secured through a planning condition. However, it has not been demonstrated that this would adequately mitigate the harm arising from the inevitable unsustainable patterns of travel that would arise.
9. For these reasons, the appeal proposal is not suitably located, with particular regard to the development plan’s spatial strategy and site accessibility. By virtue of the site’s low level of accessibility and the failure to justify that specific location, the appeal proposal clearly does not align with the area’s spatial approach, objective and intent regarding growth to 2035 contained in Policy GS2. Nor does it align with Policy GS3 of that Plan which states that in such countryside locations new development will only be supported where expressly permitted by other policies of the development plan or national policy. The Council can demonstrate a housing land supply and delivery rate in excess of the national requirements and Policy GC1. Therefore the weight to be attributed to all of these policies is unaffected.

Character and appearance

10. The appeal site comprises a ploughed field located just beyond the built framework of Flaxby. It falls within Area 69 (East Knaresborough Arable Farmland) Landscape Character Area. This area is characterised by the moderate to large scale undulating arable landform. The key aims here are to preserve and enhance the rural pastoral and historic setting of villages and diverse landscape pattern. Moreover, paragraph 174(b) of the National Planning Policy Framework (“the Framework”) states that decisions should recognise the intrinsic character and beauty of the countryside.
11. Flaxby has evolved as a small rustic village which is surrounded by this rural landscape. Its linear form is very much focused along York Road at a single plot depth. The absence of services and facilities in the village contributes to the settlement’s very intimate, leafy residential character and appearance. Dwellings are varied in height and age, although overall the settlement conveys a simple, mature, traditional village character and appearance, set within a wider countryside context.
12. The appeal site’s boundaries with the surrounding fields are well-defined by mature hedgerows and trees which offer some summer screening from the wider surrounding countryside. However, it occupies a roadside position, and that frontage is defined mainly by lower level hedgerow. Although bound by residential dwellings to one side and opposite, the appeal site remains prominent on approach and views into it are uninterrupted upon entering and exiting the village. Its positioning on the settlement edge and agricultural appearance mean that it presents as part of the surrounding countryside and contributes positively to the character and appearance of the street scene.
13. The Council’s Residential Design Guide seeks to protect or enhance the environment. Amongst other things, it recognises the importance of the landscape setting of settlements. It also states that the siting of new buildings should reflect the grain of existing settlements and take its inspiration from the subtleties of the composition of the original settlement pattern and not simply emulate suburban 20th century suburban development. However, due to the site’s depth and yield, the appeal proposal would unduly disturb the strong linear pattern of buildings which has developed along York Road, representing conflict with this guidance.
14. I concur with the Council that this landscape character is sensitive to change. The appeal site clearly forms part of the wider pastoral setting of this predominantly linear village and contributes positively to those characteristics which positively define this important village form and countryside setting. The appellant has not provided substantive evidence to rebut the Council’s concerns about the effect of the appeal proposal on the character and appearance of Flaxby’s form and landscape setting.
15. For the reasons given, the appeal proposal would cause considerable harm to the character and appearance of Flaxby and its setting. Policy GS3 of the Local Plan states that proposals for new development outside development limits will only be supported where expressly permitted by other policies of the development plan or national policy. Such an exception has not been demonstrated here. Policy HP3 of the Local Plan states the development should be designed to protect, enhance or reinforce those characteristics, qualities and features that contribute to the local distinctiveness of the rural and urban

environments. Policy NE4 of the Local Plan states that proposals are required to protect, enhance or restore the landscape character of the area and be informed and sympathetic to the distinctive landscape character areas. They must respect the form of settlements and buildings in their landscape setting and protect or enhance visual amenity. Moreover, development which would harm the character of local and wider landscape, or the setting of a settlement will be resisted. In view of the identified harm, the appeal proposal conflicts with all of these policies.

Housing needs

Custom and self-build plots

16. The Council has a duty under the Self Build and Custom Housing Act 2015 (as amended by the Housing and Planning Act) to keep a register of persons who are interested in acquiring a self-build or custom-build ("CSB") plot, and to also grant enough suitable planning permissions for such serviced plots to meet this demand. Paragraph 62 of the Framework is supportive of this type of housing as part of the overall mix. The Council maintains a CSB register, and Policy HS3 of the Local Plan sets out how the Council intends to ensure an adequate supply of this type of housing is maintained as part of the area's overall future housing stock. Through that policy the Council has made provision for CSB units to be delivered across strategic housing allocations as part of their overall type and mix. Also, there is a history of windfalls sites becoming available across the Council area.
17. However, the appellant asserts that the Council has disregarded an Inspector's recent Decision¹ ("the Pannal Decision") regarding the area's supply of CSB plots. That recent Decision highlights that there was a considerable difference in opinion about the extent to which this Council was meeting demand for this type of housing. In that case it was found that the exact position was not clear, but a shortfall in the supply of CSB plots was evident. The appellant has asserted that a serious shortfall continues and that this is following an increasing trajectory. Since the Council made its decision, the position for the period up to the end of the most recent Base Period has become available and it has advised that on 5 April 2022 the 21 eligible entries on the Register were met by the same number of planning permissions. Therefore, the Council maintains that it is meeting its CSB duty.
18. Nonetheless, from that limited evidence, it is not clear how the Council has arrived at this position. The precise balance between demand and supply now alleged by the Council leaves no contingency, in a situation where the reliability of the supply of this specialist housing product is not sufficiently evidenced. Clearly, there have been deficiencies with the register and supply data which it seems the Council has been seeking to address. The National Custom and Self Build Association has recently been critical of the Council's current approach to the Register. Furthermore, the main parties submissions fail to substantiate with clear evidence whether or not the anticipated sources of supply will be reliable during the plan period.
19. The appellant has argued that the retrospective actions of the Council are not supported in the Droitwich Decision². However, the principle of cleansing the

¹ APP/E2734/W/20/3259171

² APP/H1840/W/19/3241879 –

relevant data to make it accurate is not unreasonable here in the interests of ensuring that any previous notable deficiencies do not mar future decision making. Crucially, however, the Council's CBS duty is not curtailed by an absolute ceiling demand figure. Irrespective of what the correct current CBS demand and supply position currently is, and given the executed UU, the appeal proposal could make a significant contribution to meeting local CSB housing needs. The potential contribution and flexibility in CBS supply that this particular scheme could make here is a benefit of significance which carries substantial weight in favour of the appeal proposal.

Affordable housing

20. Policy HS2 of the Local Plan and the 'Affordable Housing Supplementary Planning Document' ("the AHSPD") sets out the affordable housing requirements for housing schemes in the plan area and this extends to the appeal proposal. Due to its nature and low level of accessibility, off-site affordable housing provision or a commuted sum in lieu of such provision is appropriate in this particular instance. Nonetheless, in line with the Council's arguments, I find that the submitted evidence and the executed UU do not demonstrate with sufficient certainty that the affordable housing requirements would be fully delivered in an appropriate and timely manner. The circumstances surrounding this case have not been demonstrated as being so exceptional as to justify the reliance on a planning condition capable of meeting the statutory tests for conditions.
21. Crucially, in this instance a draft section 106 legal agreement to secure this requirement, remains unsigned by the main parties and that has been the appellant's choice. It has therefore not been adequately demonstrated that the appeal proposal would fulfil the policy requirements to meet identified local affordable housing needs. Irrespective of the reasons why an executed section 106 legal agreement is not before me, the draft attracts no weight as a means of securing the necessary affordable housing requirement.

Unit range

22. Policy HS1 of the Local Plan seeks to deliver a range of house types and sizes that reflect and respond to the identified housing needs and demands of the area's households identified in the Housing and Economic Development Needs Assessment ("the HEDNA"). The proposed scheme, because of its specialist nature, is unlikely to fulfil all of the current identified priorities in terms of type, and size. There would however be scope to secure an appropriate mix of affordable dwellings which would assist in diversifying the area's existing housing stock in line with the HEDNA. However, because of the absence of an executed section 106 legal agreement in this regard, the appeal scheme presents a conflict with Policy HS1.
23. In overall conclusion, paragraph 60 of the Framework states that it is important that the needs of groups with specific housing requirements are addressed, and paragraph 62 recognises this includes people wishing to commission or build their own home. The contribution that the appeal proposal would make to meeting the identified wider local housing needs in terms of size, type and affordability have not been adequately demonstrated. This presents conflict with Policies HS1, HS2 and TI4 of the Local Plan. However, the contribution that the appeal proposal would make to the supply of CSB plots would be a substantial benefit weighing in favour of the appeal proposal.

Effectiveness of land use

24. I have already concluded in terms of the range of units which would be secured. Policy HS1 confirms that dwellings should be built at a density of 30 dwellings per hectare. That policy also sets out circumstances where a lower density may be permissible. The appeal proposal would fall significantly short of this requirement, and it has not been demonstrated that the appeal scheme should trigger an exception to this policy.
25. The appeal site is classified as Grade 2 land (Very Good) which is a finite resource. Policy NE8 of the Local Plan states that best and most versatile agricultural land, including Grade 2, will be protected from development not associated with agriculture or forestry except where it can be demonstrated to be necessary. If best and most versatile land needs to be developed and there is a choice between sites in different grades, then land of the lowest grade available must be used except where other sustainability considerations outweigh land quality issues. The submitted evidence does not clearly demonstrate compliance this policy.
26. For these reasons, it has not been adequately demonstrated that the appeal proposal would represent the effective use of land, with particular regard to housing density, mix and supply of best and most versatile land and it conflicts with Policies HS1 and NE8 of the Local Plan.

Ecology and biodiversity interests

27. Policy NE3 requires demonstration that significant harm to ecology and biodiversity interests can be avoided, adequately mitigated or compensated for. Paragraph 174 (d) of the Framework states that decisions should minimise impacts on and provide net gains for biodiversity. Paragraph 180 sets out the principles for proposals that would cause significant harm to these interests and the circumstances where permission should be refused.
28. In terms of biodiversity accounting, the appeal proposal does not fall within the Local Plan's definition of major development contained in the supporting text to Policy NE3. Neither has the national requirement for net gain yet come into force. However, the appellant's Ecology Statement states that the effect on protected species interests requires further survey work and no site specific mitigation measures have been provided. In light of insufficient evidence to the contrary, these matters cannot be adequately dealt with by way of a planning condition and the submission of further details at the reserved matters stage. In exercising my statutory duty in this respect, I cannot rule out that harm would arise. Crucially, the failure of the appellant to meet the provisions of the Wildlife and Countryside Act 1981 weighs considerably against the appeal proposal.
29. In conclusion, it has not been adequately demonstrated that the appeal proposal would not harm local ecological interests, with particular regard to protected species and achieving net biodiversity gain. Therefore, the appeal proposal conflicts with Policy NE3 of the Local Plan.

Local infrastructure

30. The necessity of policy requirements relating to public open space and village hall infrastructure and their levels are not disputed by the main parties. The appellant has argued that the executed UU is a sufficient means to secure

these particular policy requirements. These obligations are relevant, adequate and justified, meeting the tests of the Framework and Regulation 122 of the current Community Infrastructure (CIL) Regulations and make adequate provision for these obligations. Whilst this will suffice, as those particular obligations relate to mitigation to support the development they are of neutral consequence in the planning balance.

31. For these reasons, the submitted executed UU could facilitate adequate capacity to support the appeal proposal, with particular regard to village hall and open space provision. Consequently, the appeal proposal does not conflict with Policies TI4 and HP7 of the Local Plan.

Other Matters

32. The embedding of Passivhaus and other sustainable design credentials into the appeal scheme could be secured at the reserved matters stage through the imposition of an appropriately worded planning condition requiring the submission, approval and implementation of appropriate design codes and plot passports. However, in the absence of precise details no more than moderate weight is attributed to this matter as a benefit. The potential to incorporate a central communal space could be managed through a suitably worded planning condition to ensure it forms part of the reserved matters relating to layout and landscaping. This is a benefit which also attracts moderate weight.
33. The public interest in the scheme asserted by the appellant has not been quantified and the evidence provided does not sufficiently demonstrate that this equates to actual demand for the particular appeal proposal. Consequently this attracts limited weight.
34. The appeal scheme would provide some economic benefit during the construction phase and beyond which, because of its likely scale, attracts limited favourable weight.
35. The Ledbury, Woodville and Gamlingay Decisions³ cited by the appellant convey circumstances whereby CSB plots have been justified outside of development limits, although these do not constitute case law. The Council has not explicitly commented on these. Crucially, however there are a combination of scheme specific matters which must be factored into the planning balance for this particular appeal proposal. This means the outcome can justifiably differ to these according to the weight attributed to them.

Conclusion

36. The appeal scheme promotes an unsustainable pattern of growth. I have found considerable harm to the character and appearance of the area. Furthermore, the appellant has failed to demonstrate that the particular appeal scheme would contribute appropriately to local housing needs or represent the efficient use of land. Neither has it been demonstrated that the appeal proposal would not harm local biodiversity and ecological interests, including protected species. Consequently, the appeal scheme conflicts with the development plan taken as a whole.

³ APP/P1615/W/18/3213122
APP/G2435/W/18/3214451
APP/W0530/W/19/3230103

37. Crucially, there are no material considerations before me that outweigh this conflict, including the contribution that the appeal scheme would make to the supply of CSB plots as part of overall housing provision in the area. I therefore conclude that the appeal should be dismissed.

C Dillon

INSPECTOR

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