

HAMPSTHWAITE ACTION GROUP

APP/E2734/W/18/3195984.

Planning Inspectorate

Temple Quay House,

2 The Square,

Avon,

Bristol

BS1 6PN

29th March 2018

Dear Sirs

Appeal against refusal of outline application for the erection of up to 130 dwellings with access considered at Hampsthwaite, Harrogate. Your reference APP/E2734/W/18/3195984.

Hampsthwaite Action Group (HAG) has been made aware of an appeal by Vernon Land Partnership (Hampsthwaite) Limited against Harrogate Borough Council's (the Council) refusal to grant planning permission for an outline housing development in Hampsthwaite. As far as HAG can ascertain, your reference number is APP/E2734/W/18/3195984.

Hampsthwaite is a relatively small village located at the lower end of the Nidderdale valley adjacent to the Nidderdale Area of Outstanding Natural Beauty. HAG was set up last year by the Hampsthwaite village community to fight the disproportionate level of housing proposals in the village. Housing planning applications, permissions and emerging Local Plan draft housing allocations over the last couple of years would, if they were all to be built, increase the housing numbers in the village by 84% in less than one generation. This is not sustainable for the village and HAG, along with hundreds of local residents and Hampsthwaite Parish Council, objected to the appeal site proposals and other developments in the village. HAG has been given a remit by 392 villagers to continue to oppose these housing developments. Hampsthwaite Parish Council fully support HAG's opposition to disproportionate housing

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growth in the village and support the contents of this letter. We understand the Parish Council will write to you separately on this matter.

HAG is yet to receive any formal notification of this appeal but would like to bring three important matters to your attention and ask this letter is also brought to the attention of the Planning Inspector appointed for this appeal.

The three issues relate to firstly, the absence of an Environmental Statement for this proposed development, secondly, a request that the appeal is considered by Public Inquiry, and thirdly, a request that HAG be given 'Rule 6 status' in the appeal process. Supporting information is given below and HAG would be pleased to provide any further information to clarify these matters.

Failure to comply with the EIA Regulations 2017

The outline planning application for 130 houses (this appeal) should have been accompanied by an Environmental Statement. The application was submitted on 1 August 2017 and objectors raised the lack of any EIA Screening Opinion. This was ignored by the Council. HAG had to write to the Chief Planning Officer of the Council to point out the legal consequences of determining the planning application without a Screening Opinion and it was 24 October 2017 before this process commenced and the Council subsequently determined that an Environmental Statement was not required. The actual Screening Opinion undertaken by the Council erred in law and HAG was ready to start a judicial review if the Council resolved to grant planning permission. However, permission was refused and HAG did not need to take the matter further. There is now an appeal and HAG respectfully asks the Planning Inspector to consider the evidence already provided in representations to the Council and decide if an Environmental Statement is required. HAG has provided a number of reasons why a properly conducted Screening Opinion by the Council would have demonstrated the need for an Environmental Statement and these are set out here:

The starting point for determining whether this is an EIA Development is found in Schedule 3 of the EIA Regulations 2017. The likely significant effects of the development on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 of Schedule 3 and, with regard to the impact of the development, on the factors specified in regulation 4(2): *"The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors - (a) population and human health; (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land, soil, water, air and climate; (d) material assets, cultural heritage and the landscape; (e) the interaction between the factors referred to in sub-paragraphs (a) to (d)."*

There are two clear reasons why this is an EIA Development. First, the Council undertook a detailed sustainability appraisal of all sites being considered for the emerging Harrogate District Council Local Plan. The appeal site was rejected as a draft allocation because it failed a number of sustainability tests and there were environmental effects which the Council considered could not be mitigated. Second, when the appeal site is considered together with other housing developments which have just received planning permission, or are the subject of planning applications, there are clear negative cumulative impacts where mitigation has not been identified. Those two reasons alone demonstrate there are *likely to be significant environmental effects*.

Evidence from the consultee responses to this planning application support HAG's belief that there are likely to be significant environmental effects and this is an EIA Development requiring an Environmental Statement:

Yorkshire Water stated: *"the developer is required to submit a phasing plan with associated build rate in order for Yorkshire Water to assess the future impact on the public foul water sewer network. No assessment of the capacity of the public sewers to receive surface water has been undertaken"*. Objectors and HAG have raised significant concerns in Hampsthwaite regarding the overload on sewers and flooding.

Highways and Transportation stated: *"Based on the speed measurements provided in the TA the required visibility spays from the access are 2.4m x 120m to the south and 90m to the north. The Access Plan should be amended to demonstrate that this is achievable. The accident data only shows the period up to 2016 and should be updated. 2011 journey to work census data should be used. A junction capacity analysis is required (A59)"*. Objectors and HAG have raised significant concerns regarding extra traffic flow and safety in and around the village of Hampsthwaite and the A59/Rowden Lane junction.

Flood Risk Management stated: *"surface water will be disposed of via sustainable drainage system and existing watercourse ... it is unlikely that infiltration will prove practical and surface water discharge to watercourse is further explored in the flood risk assessment ... Should infiltration methods not be suitable and it is not possible to achieve greenfield runoff volume then it must be demonstrated that the increased volume will not increase flood risk on or off site ... Site design must be such that when SuDS features fail or are exceeded, exceedance flows do not cause flooding of properties on or off site ... The design of the site must ensure that flows resulting from rainfall in excess of a 1 in 100 year rainfall event are managed in exceedance routes that avoid risk to people and property both on and off site. A plan showing exceedance flow routes is required ... if drainage systems are not adopted by the Water Company or the Local Authority then an appropriate maintenance regime should be scheduled with a suitably qualified management company Upon receipt of satisfactory information to address the issues noted a planning condition can be recommended to ensure suitable surface water management"*. Objectors and HAG have raised significant concerns about flooding in

the village and it is clear the development as proposed is likely to make the problems worse without mitigation.

Campaign to Protect Rural England (NYCPRE) stated: *“Significant harm would be caused to the form and identity of the village and surrounding countryside. Detrimental impact on the Public Right of Way in existence across the proposed site. Increased pressure on local facilities and services. The adverse impacts on the local highway network and access.”* Objectors and HAG have raised significant concerns regarding the cumulative impact of this and other development on the identity and character of the village and the impact on its current population.

Landscape Architecture stated: *“There is a landscape objection to the development of this site because it would not be possible to successfully mitigate in landscape terms. The proposed mitigation measures to create a buffer and screen the site would result in a new development that is detached from the village. However, connecting built form more closely to the existing settlement would result in significant adverse changes to landform as well as greater visual impacts on neighbouring property and the PRow that crosses the site. Development would also result in an extension of built form up the valley side which would be detrimental in landscape and visual terms.”* Objectors and HAG raised significant concerns regarding landscape and visual impact of this housing proposal. This has also been raised by Council officers and other consultees, and the Council’s own sustainability appraisal of this site which concluded: *“Negative environmental effects arise from the loss of protected trees, Grade 3 agricultural land and the high landscape sensitivity which has limited or no capacity to accommodate development.”*

HAG looked forward to seeing a determination by the Council that this is an EIA Development, and which applied the EIA Regulations Schedule 3 criteria using at least the information referred to above – but this did not happen.

The Council made a number of errors when it undertook a Screening Opinion. To begin with, the request for a Screening Opinion by the Applicant did not contain the prescribed information (and indeed used the superseded 1999 EIA Regulations as its starting point) but the Council did not seek further clarification. The Council then made a Screening Opinion decision without undertaking any formal consultation with any other body.

The Council’s Screening Opinion relied on their interpretation of the relevant part of the Planning Policy Guidance (‘the Guidance’). It highlighted the fact that the Guidance advises that only a very small proportion of Schedule 2 development will require an Environmental Impact Assessment but did not mention the next part of the Guidance which states: *“While it is not possible to formulate criteria or thresholds which will provide a universal test of whether or not an assessment is required, it is possible to offer a broad indication of the type or scale of development which is likely to require an assessment.”*

The Council relied on the indicative criteria and threshold for a development in the Guidance that relates to *“significant urbanising effects in a previously non urbanised area as a residential development of 1000 dwellings or more”*. But the Council did not refer to the next threshold in the same part of the Guidance which states: *“or the area of the scheme is more than 5 hectares”*. The appeal site is more than 5 hectares so the Guidance test is met but the Council relied only on its assertion that *the scale of the development falls well below the 1000 dwelling indicative threshold referenced through the PPG*.

HAG believes this is an error. It is not correct to apply 1000 dwellings alone as a threshold for requiring an EIA. The scale of the development exceeds the 5 ha listed in the same column. In any case the Guidance only provides an indicative threshold before considering likely environmental effects and accepts housing developments below the 1000 threshold may still require an EIA. The actual legal threshold is set out in the Regulations. If the Regulations required a threshold of 1000 dwellings it would state this. It does not – Schedule 2 refers to 5ha or 150 dwellings. So, the threshold is met.

The Council also agreed with the assertion made by the Applicant that: *“all on and off site development impacts are capable of mitigation through the design of the scheme and its supporting infrastructure and that none of the impacts either individually or cumulatively are so significant as to require the production of an Environmental Statement.”* There is case law which clearly finds that just because a likely significant effect can be mitigated by the use of a planning condition it does not remove the need for an Environmental Statement.

The Council then argued that the housing was not on all the site therefore the housing part of the proposal was less than 5 ha. This again is an error - the EIA Regulations do not differentiate between the built part of the area and landscape part of the area. 5ha is taken as a whole.

The Council refers to the other housing developments in Hampsthwaite village but again states the cumulative total is less than 1000 dwellings. This is a repeat of the earlier error.

The Council then asserts that: *“The proposed development has a magnitude and spatial extent of impact that is wholly assessable under the terms of a planning application given its relative limited extent in terms of numbers of dwellings proposed and the built footprint rather than the overall site area. This is not an issue that requires an Environmental Statement.”* This is another error. The EIA Regulations apply if there are likely to be significant environmental effects and the requirements of the Regulations are not removed because a planning application of *“relative limited extent”* can be determined using planning conditions.

The Council’s summary of its position again incorrectly applies the EIA Regulations: *“The significance of the impact is diminished by the development of no more than 130 dwellings on an area of around 4.8ha within the 9.3ha overall site and if planning permission were to be granted then the numbers of dwellings and the developable area could be strictly controlled through the conditions of any consent.”* As above, there is clear case law which deals with this matter.

HAG has concluded there is clear evidence for requiring an Environmental Statement and the Council's Screening Opinion decision is full of errors and fails to apply the EIA Regulations, Guidance and legal case law. It incorrectly used an indicative 1000 dwelling threshold to Screen out the need for an Environmental Statement.

Appeal to be determined on the basis of a Public Inquiry

HAG requests the appeal be determined by Public Inquiry. There are a number of reasons for making this request.

There were over 130 objections to the planning application including statutory consultees. The likely significant environmental effects are wide-ranging and have been identified by the various consultation responses.

The appeal site has already been rejected by the Council as a proposed housing site allocation in the emerging Local Plan. Other sites in the village have been included in the draft Local Plan. There have been substantial numbers (many hundreds) of objections to the cumulative impacts of these various developments and the potential disproportionate housing growth in the village.

The Harrogate District Council Local Plan Publication Draft has just gone through its final consultation stage and the Council expects the Local Plan to be submitted to the Secretary of State this summer with a Public Examination process starting later this year. The Council has argued that the cumulative impact of the housing allocation proposals is acceptable. But this is a matter opposed by hundreds of Hampsthwaite village residents. The Local Plan process in the village is controversial and it would make little sense for the Planning Inspectorate to be making a decision on the appeal site 'outside' of the Public Inquiry arena, while the Local Plan process runs 'within' the Public Examination process.

There may also be Prematurity issues in that a grant of planning permission on the appeal site could compromise the Council's position in relation to the cumulative impact of delivering housing on its preferred housing allocations.

The village community would feel let down if housing were to be granted on the appeal site in the absence of any opportunity for them to provide formal evidence. Many of the cumulative impact issues which ought to be considered by the appeal process apply equally to other sites in the village which are subject to draft allocations and which will be tested at Public Examination. HAG has submitted substantial evidence to the Local Plan Publication Draft consultation process in this regard.

HAG firmly believes a Public Inquiry is appropriate in this case because the proposal is controversial and there is considerable local opposition to housing on the appeal site in Hampsthwaite which is also linked to a Local Plan Public Examination process.

HAG requests Rule 6 Status at a Public Inquiry.

At the date of this letter HAG has not received formal notification of the appeal from the Council or how it will be determined. HAG understands the appeal has been accepted as valid and they hope it will be determined by Public Inquiry. If this is the case, HAG would like to take a leading role in the inquiry and call our own witnesses.

HAG would like to provide a Statement of Case in accordance with Rule 6(6) (of the Inquiries Procedure Rules) but do not have any idea of the current timetable for this.

HAG would like to appear and provide evidence at the Public Inquiry to support our position. Although the Council refused to grant planning permission for the development being appealed, it cited only two reasons for that refusal. HAG would like to provide further evidence relating to additional matters which supports a refusal of permission at this appeal site.

HAG would like to receive the Statement of Case for the Council and the Appellant and the evidence of any other party. HAG has accumulated a large quantity of evidence in its fight against the disproportionate housing growth in the village and some of this information will be useful to the Planning Inspector when considering the appeal.

HAG believes it can contribute substantively to the appeal process in terms of identifying adverse environmental effects (in addition to landscape and highways issues raised by the Council), cumulative impacts and a number of other sustainable development issues we have raised in our objections.

HAG looks forward to hearing from you with your response to the matter raised in this letter.

Yours faithfully

pp: Terry Mounsey

On behalf of Hampsthwaite Action Group

(a copy of this letter has been sent to the Harrogate Borough Council planning authority case officer, Mike Parkes)

