

## **CD7.2**

### **Appeal Decision – Land west of 30 and 31 Torbay Drive, North East Lincolnshire**

#### **Preface:**

This appeal decision is important because it deals with a scheme allowed despite being outside of the settlement boundary and the authority demonstrating that they have a 5-year housing land supply.



## Appeal Decision

Hearing held on 16 August 2023

Site visits made on 15 and 17 August 2023

**by Bhupinder Thandi BA (Hons) MA MRTPI**

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

**Decision date: 15 November 2023**

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**Appeal Ref: APP/B2002/W/22/3311282**

**Land to the west of 30 and 31 Torbay Drive, North East Lincolnshire, Grimsby DN33 3DQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Kevin Snape of Snape Properties Ltd against the decision of North East Lincolnshire Council.
  - The application Ref DM/0285/22/FUL, dated 27 March 2022, was refused by notice dated 4 November 2022.
  - The development proposed is 64 dwellings consisting of bungalows, houses, detached garages, access roads, drives including landscape works.
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### Decision

1. The appeal is allowed and planning permission is granted for 64 dwellings consisting of bungalows, houses, detached garages, access roads, drives including landscape works at land to the west of 30 and 31 Torbay Drive, North East Lincolnshire, Grimsby DN33 3DQ in accordance with the application, Ref DM/0285/22/FUL dated 27 March 2022 subject to the conditions set out in the schedule at the end of this decision.

### Applications for costs

2. An application for costs was made by Mr Kevin Snape of Snape Properties Ltd against North East Lincolnshire Council. This application is the subject of a separate decision.

### Preliminary Matters

3. The Council highlight a significant change in circumstance since their decision on the application. The North East Lincolnshire Local Plan (2018) (LP) is now more than 5 years old and as such the standard method to calculate the Council's housing land need has been applied to determine the Council's 5-year housing land supply position. Based on this approach the Council state that they can demonstrate a supply of 13.1 years. I return to this later on in my decision.
4. The appellant has produced a signed and dated planning obligation under Section 106 of the Town and Country Planning Act (1990). The planning obligation would secure affordable housing and a play area on site and a financial contribution towards primary and secondary education.

## **Main Issues**

5. The main issues are:

- The effect of the proposed development upon the character and appearance of the area and the Waltham and Grimsby and New Waltham Strategic Gap; and
- The effect upon the safe and efficient operation of the local highway network.

## **Reasons**

### *Character and appearance*

6. LP Policy 5 sets out that permission for development in open countryside, outside the defined development boundaries of settlements will be limited to certain types of development and where they have regard to a number of generic design criteria. The policy does not support the provision of market housing in countryside locations. The justification to Policy 5 states that the nature and form of settlement edges has informed the process of defining development boundaries including key characteristics, views and distinctive features, visual open space and sensitivity to change.
7. LP Policy 40 designates strategic gaps to protect the setting and separate identity of settlements. The supporting text to the policy states that the aim of the gaps is to maintain the openness of land to prevent the coalescence of settlements.
8. The development proposes the construction of 64 dwellings comprising a mix of bungalows and two storey dwellings with a wildflower meadow and woodland extending over around 2 hectares along the field edge.
9. The appeal site lies within the Waltham and Grimsby and New Waltham strategic gap and beyond the defined development boundary of Scartho. The appeal site is triangular in shape comprising agricultural land subdivided from the wider field by immature hedgerow. It forms part of the wider agrarian landscape between the settlements of Scartho and New Waltham, defined by gently undulating fields and wooded areas. The site's open character contributes to the large field pattern and the rural appearance of the landscape.
10. That said, the site is also heavily influenced by the amount of built development locally with existing residential development extending along the site's northern and eastern boundary. The dense housing and its arrangement along the edges of the site results in a hard and domesticated edge between the built form and the countryside beyond.
11. At the time of my site visit I walked along Public Right of Way 70 (PRoW) that extends across the fields between Scartho and Waltham. In my view, when leaving either settlement, along the PRoW, the initial experience is one of an abrupt change from a built-up environment to rurality. The rural character increases when walking along the PRoW as more extensive views of the surrounding open countryside and big skies become more apparent. However, one does not fully escape the urban environment and the presence and extent of the built form is still very apparent from within this landscape.

12. The North East Lincolnshire Landscape Character Assessment (NELLCA) and North East Lincolnshire Landscape Character Assessment, Sensitivity and Capacity Study (NELLCASCS) documents state that the site falls within an 'Open Wooded Farmland' area which is characterised by a predominantly flat, low lying visually open landscape emphasised by arable farmland, hedgerow field boundaries and interspersed woodland blocks. The documents indicate that the area has a medium sensitivity to change and a medium-low capacity for additional development.
13. The Council advised that there have been no changes of material significance to the landscape since the NELLCA and NELLCASCS were produced. The appellant, on the other hand, takes a different view and contends that the baseline established in these documents has moved on in part due to urbanisation, traffic and more people using the countryside.
14. The application was accompanied by a Landscape Character Assessment (LCA), which examines and appraises the landscape character of the site and the surrounding area. The LCA identifies the presence of an 'Urban Fringe' along the edges of Scartho, Waltham and New Waltham influenced by increased human activity resulting in a 'zone of transition' between the built environment and surrounding rural landscape.
15. I acknowledge that the site sits within a pleasant landscape. However, the contribution it makes to the wider rural landscape is somewhat undermined by the presence of the domesticated margin of land that runs along the settlement edge and two sides of the site.
16. There would be encroachment into the countryside and urbanisation of the site resulting from the proposed development. However, it would be read as a logical extension of the established built form. The layout, form and heights of the dwellings would be commensurate with housing locally and the swathe of green infrastructure and extensive landscaping would provide a visual connection and transition between the built form and the agrarian landscape to the south.
17. The proposed landscaping would reduce the perception of urban encroachment creating a considerable soft and verdant edge assimilating the proposed development into the local landscape. Conditions relating to the management of the green infrastructure for the lifetime of the development would maintain adequate landscaping for the long term.
18. Scartho and Waltham are separated by a single field, albeit a large one. The likelihood of coalescence is one of perception and it is important to understand how the area is experienced as people move through it. Grimsby Road is a busy route passing through the landscape to the east of the site connecting Waltham to Grimsby. When travelling along the road the gap between the two settlements is not discernible, and views of the site are largely screened by vegetation. Therefore, there would not be any significant appreciation of the proposed development and the encroachment into the rural landscape from the road.
19. Whilst I note the Council's comments it is not the purpose of the planning system to protect private views. The proposed development would be most evident in localised views along the PRoW. However, residential development is not an anomalous feature in the area and the development would be read as a

continuation of the established built form and experienced in the context of the dense built form that flanks the site on two sides.

20. When leaving Waltham along the PRow the experience of leaving the built form of the village and entering the countryside would remain largely the same. The local experience would evidently change when leaving Scartho through the introduction of houses and associated roads along a stretch of the PRow. However, the separation between the proposed dwellings and the path together with the soft landscaping along its length would maintain a relatively open and green aspect along the northern section of the PRow ensuring its quality is not diminished.
21. Furthermore, once beyond Torbay Drive there would be an impression of a rural setting. The abrupt change in character from suburban development to one of countryside and the perception of big skies would still be apparent from this point onwards. As such, the sense of leaving one place before arriving at another would remain. Whilst some might say that this change would be dramatic it does not necessarily mean that it would be harmful either in visual terms or in respect of how the local area is experienced.
22. In coming to my decision, I have paid regard to the value that local residents place on the strategic gap as an open green space for their general wellbeing.
23. Taking into account the localised effects of the proposed development and that it would not unduly harm the existing visual relationship between Scartho and Waltham leads me to conclude that there would be an adequate physical and perceptual gap between the two settlements so that coalescence would not occur and the separate identities of the two villages would not be diminished.
24. Whilst the proposal would encroach into open countryside the impact would be somewhat offset by the introduction of the extensive area of meadow and woodland softening the built form and integrating development into the landscape. As such, the proposed development would accord with LP Policies 22, 40 and 42 which, amongst other things, require developments to have a high standard of sustainable design; regard to landscape context and seek to protect the setting and separate identities of settlements.
25. Despite the above, there would be conflict with LP Policy 5 which seeks to direct new development to within settlement boundaries.

*Safe and efficient operation of the local highway network*

26. The proposed development would join Torbay Drive, which forms part of the adopted highway, resulting in an extension of the adoptable road and footpath. Traffic to and from the dwellings would pass along through an existing residential area including Torbay Drive and Boundary Road. With this in mind I have paid regard to the concerns raised about additional vehicular traffic and on street parking pressures in the area.
27. The appellant's Transport Statement (TS) used the TRICS database to estimate the number of trips that would be generated per dwelling in the AM and PM peak hours. The database is based on real world data and the trip generation figures were accepted by the Highway Authority.
28. The appellant's evidence indicates that the proposed development would generate 35 two-way peak hour movements, which they contend would not

result in a severe impact on the road network or highway safety. This is a view shared by the Highway Authority.

29. I acknowledge that it is likely that most households would have more than one vehicle. However, at the time of my site visits, on a weekday morning and afternoon, I observed that Boundary Road, Torbay Drive, Totnes Road and Dawlish Road were lightly parked, with very low levels of vehicle and pedestrian movements along them. Whilst I appreciate that this is a snapshot in time, there were no obvious signs of significant movements along the road, congestion or parking stress in the area.
30. The roads in the local area serve dwellings which suggests traffic speeds are likely to be low. There is reasonable visibility along Torbay Drive and surrounding roads and pedestrians, cyclists and cars would be able to see each other. In addition, visitors that do not have knowledge of the road layout or area are likely to drive more carefully and consciously.
31. Local residents submit that the surrounding roads and junctions are frequently gridlocked. However, this does not tally with my observations or the appellant's evidence which indicates that the surrounding highway network is operating within capacity and the proposed development would not significantly impact upon it.
32. I also note the proximity of local services and facilities and public transport links that would be directly accessible from the site via dedicated footpaths. Therefore, future occupiers would not be overly reliant on private vehicles as suitable options exist for residents to access services and facilities on foot and by public transport.
33. Drawing these matters together I am satisfied that the proposed development would not generate unacceptable levels of traffic or lead to driver frustration or conflict on account of the existing road conditions along Torbay Drive and surrounding roads.
34. Whilst there may be some potential for conflict between cars and vehicles associated with the construction phase a condition for a construction management and traffic plan would manage construction traffic during this phase to minimise such instances.
35. In terms of refuse collection, I have considered the swept path diagrams provided and find that refuse lorries would be able to enter the site and manoeuvre within the estate roads without hinderance. The make up or condition of the local roads is not a matter for me in consideration of this appeal.
36. I have taken into account that my visits were undertaken during the school summer holidays, but my observations are consistent with those outlined within the appellant's TS which was undertaken during school term time. Despite the comments received it is evident that the appellant's highway assessment has regard to other committed developments in the area. Accordingly, I am satisfied that the TS is sufficiently robust in this regard.
37. Notwithstanding the representations received regarding additional cars and parking, the Highway Authority had raised no objection to the planning application. There is no compelling evidence before me so as to lead me to a different conclusion in respect of this matter.

38. As such, based on the evidence before me, I am satisfied that the proposed development would not adversely affect the safe and efficient operation of the highway network. It would accord with LP Policy 5 which, amongst other things, requires developments to have regard to access and traffic generation.

### **Other Matters**

39. Despite the representations received there is no substantive evidence, before me, to suggest that the development would increase the risk of flooding locally or that the capacity of the attenuation pond proposed would not be sufficient to serve the development. Furthermore, conditions have been imposed for details of the drainage strategy including its implementation and long term maintenance.

40. The appellant has submitted a Preliminary Ecological Appraisal Report (PEA) which sets out that the site comprising arable land with improved grassland margins is sub optimal to support a number of protected species including great crested newts, badgers and bats. I acknowledge the PEA was undertaken outside the optimal survey period for some protected species. However, there is no credible information before me to question its conclusion, particularly as the Council's Ecologist did not raise any objections to the application.

41. Furthermore, a condition has been imposed requiring an updated great crested newt survey to be undertaken prior to any development taking place on site. In the event that protected species were found on site the development could not proceed until adequate mitigation was secured. As such, I am satisfied that the appellant has adequately demonstrated that there are no insurmountable ecological constraints on and around the site.

42. There is no credible evidence before me to suggest that the proposed development would result in instances of anti-social behaviour or that it would put additional pressure on local services including healthcare. Issues such as land ownership and ransom strips fall outside of what I consider in my decision.

### **Planning balance**

43. There is no dispute between the two main parties that the Council can demonstrate a five-year supply of deliverable housing land. Therefore, paragraph 11 d) of the Framework is not engaged by this particular factor.

44. Paragraph 11 d) of the Framework is also not engaged because the most relevant policies for determining the application are not out of date. For these reasons, the planning balance set out in Section 38(6) of the Planning and Compulsory Purchase Act is the one to be applied in this case.

45. The Act requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. Therefore, whilst the development plan has primacy in decision making, there are circumstances where material considerations may indicate that a decision otherwise than in accordance with the plan should be taken.

46. Proposing housing on the appeal site conflicts with the LP as it would be located beyond a defined settlement boundary. However, this harm would be tempered because the appeal site sits on the edge of Scartho neighbouring residential development. Furthermore, it is an agricultural field heavily influenced by



- existing built form and a domestic margin. I therefore give this conflict with the development plan moderate weight.
47. Whilst the Council can demonstrate a deliverable housing land supply of 13.1 years this has come about due to the use of the standard method to calculate the Council's housing land need. Based on the information before me until recently the supply stood below 5-years at around 4.2 years. It is also evident that there is a history of undersupply in the area.
  48. With this in mind the construction of open market housing would make a reasonable contribution towards housing supply in the area. Despite the current position the five-year housing-land supply figure it is not a ceiling and exceeding it is a positive outcome, particularly given the national context of a housing crisis, and the overall emphasis in national policy to significantly boost the supply of housing.
  49. Whilst the provision of affordable housing would "wash its face" in the words of the Council, the importance of affordable housing at the site of different tenures and sizes cannot be underestimated. The Council could not produce any substantive evidence to indicate that they are meeting the needs of the local community in respect of the delivery of affordable homes. Accordingly, I give the delivery of affordable homes significant positive weight in the planning balance.
  50. The construction of 64 dwellings would provide jobs albeit this would be largely short term limited to the construction phase. Future occupiers would help maintain or enhance services in the area including in Scartho, Waltham and Grimsby. These are factors in favour of the proposal.
  51. A biodiversity net gain of 25% for general habitat and 72% for hedgerow habitat would be achieved. This is possible because the appeal site is arable land and, in common with much agricultural land, it offers relatively low existing biodiversity value. This biodiversity net gain alongside the provision of approximately 2 hectares of publicly accessible open space and play equipment on the edge of Scartho would be benefits of the scheme to which I attach significant positive weight.
  52. The proposed development would not adversely affect highway safety, increase the risk of flooding or unduly affect protected species. However, these are matters of neutral consequence in the overall balance.
  53. The planning obligations would contribute towards supporting or improving local education infrastructure. However, the obligations would essentially mitigate the impact of the proposed development in planning terms. As such, these are matters of neutral consequence in the overall balance.
  54. Whilst there would be some minor conflict with the LP in respect of the location of development, I find that the economic, social and environmental benefits of the proposal would significantly and demonstrably outweigh the harm and outweighs the conflict with the development plan. A decision should thus be taken otherwise than in accordance with the development plan.

### **Conditions**

55. I have considered the imposition of conditions in accordance with the Framework and the Planning Practice Guidance. In the interests of precision



- and clarity I have undertaken some rationalisation of the conditions suggested by the Council.
56. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans as this provides certainty.
  57. Conditions relating to the external materials, site levels, landscaping, tree protection, the open space and woodland are necessary in order to ensure the satisfactory appearance of the development. A condition ensuring the ongoing management and maintenance of the external areas including the play equipment has also been imposed.
  58. In the interests of human health conditions relating to unexpected land contamination and for an air quality improvement scheme to be submitted have been imposed.
  59. In the interests of sustainability and biodiversity conditions for details of a sustainable drainage scheme, ecological enhancements and for an updated great crested newt survey to be carried out have been imposed.
  60. A condition for details of the estate roads and footways has been imposed in the interests of highway safety. For similar reasons and in order to protect the living conditions of nearby residents a condition for a Construction Management and Traffic Plan has been imposed.
  61. The Council has suggested removing permitted development rights for additions or alterations to the roof, falling within Classes B and C of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 in respect of the proposed bungalows.
  62. I acknowledge that paragraph 54 of the Framework advises planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. However, in this particular instance it is necessary and reasonable to remove permitted development rights to ensure the satisfactory appearance of the development and in order to safeguard the living conditions of neighbouring occupiers.
  63. The Council has suggested a condition for a scheme of water efficiency and re-use. Such matters are dealt with by other legislation ie. Building Regulations and therefore, I do not find that it is reasonable to impose such a condition.
  64. The Council has suggested a condition restricting deliveries to and from the site during the construction phase. This condition would form part of the details required as part of the Construction Management and Traffic Plan condition. Therefore, it is not necessary to impose a separate condition.

### **Conclusion**

65. For the reasons set out above the appeal succeeds.

*B Thandi*

INSPECTOR

## Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing Number 01.335.22 Rev C; Heather Plans and Elevations Drawing Number 04.335.22; Poppy Plans and Elevations Drawing Number 05.335.22; Fuchsia Plans and Elevations Drawing Number 06.335.21 Rev A; Fuchsia Plans and Elevations Drawing Number 08.335.21; Poppy Plans and Elevations Drawing Number 09.335.22; Elm House Plans and Elevations Drawing Number 11.335.21; Hornbeam Plans and Elevations Drawing Number 12.335.21; Walnut House Plans and Elevations Drawing Number 13.335.21; Aspen House Plans and Elevations Drawing Number 14.335.21 Rev A; Holly Plans and Elevations Drawing Number 15.335.22; Proposed Garage Plans and Elevations Drawing Number 16.335.22; Aspen Plans and Elevations Drawing Number 17.335.21 Rev A; Tracking Layout Drawing Number E844-05 Rev A; Feasibility Layout Drawing Number E844-FEAS Rev B; Feasibility Road and Sewer Sections Layout Drawing Number E844-FEAS20; Feasibility Road and Sewer Sections Layout Drawing Number E844-FEAS21; Proposed Block Plan Drawing Number 2.335.22; Topographical Survey 3.335.22; Topographical Survey Drawing Number 4109/10/001; Landscape Master Plan Drawing Number LMP\_M010622\_AH; Landscape Plan No.2 Drawing Number LP2\_101622\_AH; Landscape Plan No.3 Drawing Number LP3\_101622\_AH; Landscape Plan No.4 Drawing Number LP4\_101622\_AH and Proposed Site Plan Ecology Drawing Number 15.335.22 Rev H
- 3) No development shall take place until a Construction Management and Traffic Plan has been submitted to and approved in writing by the local planning authority. The approved Construction Management and Traffic Plan shall be adhered to throughout the construction period for the development.
- 4) No development shall take place until details of the standards to which the roads and footways serving the development are to be constructed, and their management, have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the roads and footways have been constructed in accordance with the approved details.
- 5) No development shall take place until details of the materials to be used in the construction of the external surfaces of the proposed development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until a scheme for Air Quality Improvement has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 7) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed dwellings, in relation to existing ground levels have been submitted to and approved in

- writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 8) No development shall take place until an up-to-date Great Crested Newt Survey is submitted to and approved in writing by the local planning authority. Should Great Crested Newts be found to be present then a mitigation strategy shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the recommendations set out in the survey and the mitigation strategy.
  - 9) No development shall take place until a scheme of ecological enhancement, based upon the conclusions and recommendations set out in the submitted Ecological Appraisal, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
  - 10) No development shall take place until details of the sustainable surface water drainage scheme including a phasing and implementation plan, following the principles shown on Drainage Layout Plan - E844-FEAS and details in the Flood Risk Assessment have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
  - 11) No development shall take place, above ground, until management plans for the proposed open space, sustainable drainage system and play equipment has been submitted to and approved in writing by the local planning authority. The management plans shall include details of play equipment, long term design objectives, timing of the works, management responsibilities and maintenance schedules for them. The development shall be carried out in accordance with the approved details and maintained for the lifetime of the development.
  - 12) The open space and woodland belt shall be completed in accordance with the approved landscaping scheme shown on Landscape Master Plan Drawing Number LMP\_M010622\_AH; Landscape Plan No.2 Drawing Number LP2\_101622\_AH; Landscape Plan No.3 Drawing Number LP3\_101622\_AH and Landscape Plan No.4 Drawing Number LP4\_101622\_AH before occupation of the first dwelling and shall be maintained for the lifetime of the development.
  - 13) All the trees and planting shown on Landscape Master Plan Drawing Number LMP\_M010622\_AH; Landscape Plan No.2 Drawing Number LP2\_101622\_AH; Landscape Plan No.3 Drawing Number LP3\_101622\_AH and Landscape Plan No.4 Drawing Number LP4\_101622\_AH shall be protected, during the construction of the development, in accordance with details that have been submitted to and approved in writing by the local planning authority.
  - 14) No development shall take place, above ground, until a scheme for phasing and implementation of the landscaping through the rest of the site has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
  - 15) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons

following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 16) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 17) The development hereby permitted shall not be occupied until a Residential Travel Plan has been submitted to and approved in writing by the local planning authority. The Plan shall be implemented in line with its terms.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no additions or alterations to the roof within Classes B and C shall be constructed on plots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27.

## **APPEARANCES**

### FOR THE APPELLANT:

Mark Johnson of Johnson Mowatt

Martin Carter of Kings Chambers

Graham Prior of Robert Doughty Consultancy

John Vernon of Northern Transport Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Limmer – Major Projects Planner

Martin Dixon – Development Services Manager

Sarah Bowland – Landscape Architect

Ian King – Spatial Planning Manager

Lara Hattle – Senior Highway Development Officer

Councillor David Hasthorpe – Deputy Chair of Planning Committee

### INTERESTED PARTIES:

Councillor Ron Shephard

Councillor Lottie Croft

Jane Arnold

Kevin Arnold

Tony Hardwick

Lee Hubbard

Shirley King

Pat Taylor

Jane Wilson