

Appeal Decision

Site visit made on 16 August 2016

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

Appeal Ref: APP/E2734/W/16/3147002

Land east of Orchard Lane, Ripley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Sir Thomas Ingilby Bt against Harrogate Borough Council.
 - The application Ref 15/01639/FUL, is dated 14 April 2015.
 - The development proposed is the erection of 5 residential units.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 5 residential units at Land east of Orchard Lane, Ripley in accordance with the application Ref 15/01639/FUL dated 14 April 2015 and subject to the conditions set out in the schedule towards the end of this decision.

Preliminary Matter

2. Following receipt of the appeal the Council confirmed that it did not oppose the proposed development. Therefore I have set out below what I consider to be the main issues having regard to representations from third parties.

Main Issues

3. The main issues are the effect of the development on i) the character and appearance of the Ripley Conservation Area (CA) and ii) highway safety.

Reasons

Character and Appearance

4. Ripley is a small and attractive village of historic significance characterised by strong uniformity in its architecture notably in the stone buildings and the pointed style of fenestration.
 5. The proposed terrace whilst utilising a more common squared form of window would be constructed in stone with a hipped and slate-tiled roof incorporating chimneys. It would be in keeping with the scale and form of the adjacent terrace fronting Orchard Lane.
 6. The proposed detached single storey dwelling would be modest in scale and incorporating stone and slate materials and the retention of the existing low stone boundary wall would also be sympathetic to its surroundings.
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7. The appeal site is not in a prominent location in relation to Main Street, the key thoroughfare through the village. The site is fleetingly visible from the adjacent A61 Ripon Road bypass via gaps between mature boundary trees though visibility would increase on a seasonal basis with leaf fall.
8. Whilst I acknowledge that protection of the village form and retention of gaps to maintain views are recognised as important objectives in the CA character appraisal, a buffer of open pasture between the proposed development and the bypass would be retained. This would soften the visual impact of the development and help to protect the setting of the village.
9. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Taking the above factors into account I conclude that the development would preserve the character and appearance of the CA.
10. I have a further duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the proposal on the setting of the nearby Hotel de Ville and the dwellings of South View and Sunnyside which comprise Grade II listed buildings. The location and form of the proposed development and retention of an open space buffer is such that the setting of the listed buildings would not be adversely affected.
11. I note that the Council has raised no objection to the proposal in terms of consistency with national planning policy and impact on the wider landscape.
12. Taking the above into account the development would be in accordance with Saved Policy HD3 of the Harrogate District Local Plan 2001 (LP), Policy SG4 of the Harrogate District Core Strategy 2009 (CS) and with the National Planning Policy Framework (the Framework) which seek to protect heritage assets and promote good design ensuring that development is well integrated with its surroundings.

Highway Safety

13. The site would be accessed via a short unmade track leading from Orchard Lane, a relatively narrow road without an adjacent footpath. Orchard Lane has a northern and southern junction with Main Street, effectively forming a loop which passes behind properties on the eastern side of this main thoroughfare.
14. The appellant has provided traffic survey information which indicates that vehicle movements on Orchard Lane are infrequent and very small in number. This however is disputed by many third parties including local residents who say the road can be prone to congestion and that the survey, undertaken for a short period in November, simply reveals a snapshot at a less busy time of year.
15. From my visit I noted that parking takes place along Orchard Lane and in the vicinity of the site entrance which effectively makes it a single lane road. It was also apparent that there were many visitors to the village with significant use being made of the large car park at the southern end of the village. However, because Orchard Lane links two points on Main Street I do not consider it presents an obvious shortcut to through traffic and would therefore primarily be used for access to property located along it.

16. I would envisage the lane becoming blocked from time to time by larger commercial vehicles, for example associated with refuse collection or deliveries to the small number of businesses located in the vicinity of the southern junction. However this would not be a continuous impact and the existence of alternative access points connecting Main Street and Orchard Lane would help to mitigate any obstruction to traffic seeking to access or leave the appeal site.
17. The development would incorporate off street parking spaces to serve each dwelling which would overcome the risk of additional parking congestion on Orchard Lane. Furthermore the limited number of additional vehicles generated by this small scale development would not add significantly to the use of Orchard Lane. In addition the narrow and curved form of Orchard Lane would tend to make drivers pass more slowly and with greater care including when emerging from and approaching the Main Street junctions. This would tend to be supported by the absence of relevant vehicle accident related data for the locality and which is undisputed by the parties.
18. I note that the Council has not raised concerns with regard to the use of the short track leading up to the site entrance which would be appropriately surfaced. Notwithstanding the proximity of existing car parking on Orchard Lane and close to the site entrance I have not been presented with any compelling evidence that would lead me to take a different view. The likelihood of only a small number of additional vehicles together with cautious driver behaviour would not result in significant traffic and pedestrian conflict and highway safety issues along the access road.
19. I noted during my visit that Main Street is a busy road and that parking takes place particularly in the vicinity of the southern Orchard Lane junction which would compromise driver visibility to a degree when emerging from that junction. However there are low speed restrictions in force through the village, and the appellant would be agreeable to some minor highway related alterations to improve visibility along Main Street when emerging from the Orchard Lane junctions.
20. On this basis, despite previously having expressed concerns, the Highway Authority no longer opposes the development. In addition because the use of Orchard Lane is likely to be for access rather than through traffic, drivers are more likely to be familiar with such potential hazards and drive with an appropriate level of caution.
21. Securing appropriate access to the site for construction related traffic would be controllable through the imposition of a construction management condition, as would be normal in respect of new development.
22. For the above reasons I conclude that the development would not result in harm to highway or pedestrian safety. It would therefore be in accordance with Policy SG4 of the CS and the Framework insofar as they seek to avoid highway safety problems whilst only resisting development on transport grounds where the cumulative impacts of development would be severe.

Other Matters

23. There have been several further objections to the scheme raised by third parties. In terms of residential amenity, concerns have been raised that the proposal would harm outlook and would lead to overshadowing of property.

Whilst there would be a degree of impact in this regard to immediately adjacent properties, there is no dispute between the main parties that the new development would be in keeping with the Council's guidance on separation between buildings.

24. The proposed dwellings would be orientated and sufficiently separated from adjacent property to largely avoid issues of overlooking and loss of privacy. The exception to this is the western side elevation to the proposed terrace in which there would be two windows serving a landing and lobby area respectively close to the rear gardens of dwellings on Orchard Lane. However it would be possible to impose a condition requiring these windows to be obscure glazed and fixed shut in order to overcome this issue.
25. Whilst it would be possible to overlook the rear garden area of The Barn to a degree from the parking area to the rear of the proposed terrace this could be mitigated by increasing the height of the existing low boundary wall and introducing some soft landscaping measures. In any event the use of the parking area would be characterised by transient activity and used relatively infrequently. It would not therefore result in an undue level of harm.
26. In terms of security the presence and orientation of the dwellings would introduce better natural surveillance to the locality helping to deter crime and anti-social behaviour. Whilst a degree of noise and disturbance would be inevitable during the construction period, this would be a short term impact and could be controlled through the imposition of a construction hours condition. In the longer term the proposed residential development which would not be inherently noisy would be expected to integrate with its residential surroundings. I have not been provided with evidence to support the concern that construction activity would risk causing damage to property.
27. In terms of existing infrastructure, there is no objection from the statutory consultee with regard to drainage capacity and it would be possible to impose a condition to secure satisfactory details in this regard. Concern has been raised with regard to the capacity of the local school, however I have not been provided with any detailed evidence in this respect. In any event, the small number of additional dwellings proposed would be unlikely to result in significant additional need and inconvenience in this regard.
28. The development would lead to the loss of grazing land and the sight of various animals there which I understand is an attraction to visitors and residents. It would inevitably also have some impact on wildlife. Whilst I agree that this is unfortunate I have not been provided with evidence that the retention of what is a relatively small area of farmland would justify the refusal of planning permission in this case.
29. I note that some residents have said that the village does not need more housing. However in the absence of any harm being caused by the development and the limited positive impacts that it would have in terms of supporting local economic development, it is a matter for the developer to decide whether the market would support the development in this location.
30. Concern has been raised that the development would interfere with rights under Article 1: The Peaceful Enjoyment of Property and Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998 (HRA). However these are qualified rights and Article 8(2) provides that

interference may be justified where it is in the interests of, amongst other things, the economic well being of the country which has been held to include the protection of the environment and upholding planning policies. Furthermore Article 1 provides that no one shall be deprived of his possessions except, subject to conditions, in the public interest.

31. In this case I have found the development to be in accordance with planning policies. Furthermore whilst I acknowledge that residents would experience change to their surroundings, I have not identified harm and as such the impact of this would be outweighed by the wider public interest of the need to increase the supply of housing as set out in national policy. Accordingly the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 or Article 8.
32. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.
33. It is apparent that the original site location boundary erroneously included a rear access path serving a number of properties on Orchard Lane. An amended location plan and drawing was submitted to the Council correcting this error by excluding the footpath from the site.
34. I also acknowledge that certain residents have alleged that the correct procedures for notifying interested parties about the application were not followed. However from the information before me and the representations that I have read and considered I am satisfied that third parties have not been prejudiced in this respect.

Conditions

35. I have considered the conditions suggested by the Council. Conditions specifying the plans, details of the external materials, detailed positioning of windows and doors, landscaping including boundary treatments and tree protection are needed to safeguard the character and appearance of the area. A condition requiring that windows in the west elevation of the terrace are obscure glazed and fixed shut is required in order to prevent overlooking. Conditions to limit construction working hours and to secure insulation of the dwellings from the noise of traffic using the nearby bypass are required to protect the living conditions of residents.
36. Conditions requiring off-site highway works and the protection of the highway from loose material are required in the interests of highway safety. Conditions controlling the protection of vehicle parking and turning areas and the provision of a construction management plan are required to protect the living conditions of residents and in the interests of highway safety. A condition requiring the provision of electric vehicle charging points is required in order to promote sustainable travel. A condition to assess the risk and remediate any contamination present on the site is necessary in the interests of environmental protection. A condition requiring drainage details is required to ensure the satisfactory drainage of the site.

37. The Government's Planning Practice Guidance states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. I am however satisfied that such conditions are required to control future extensions and alterations to the dwellings and property to protect the living conditions of residents and the character and appearance of the area.
38. I have split up the wording of some of the suggested conditions and made minor alterations to the wording of others for clarification and to ensure they meet the tests for conditions as specified in national planning guidance. Conditions regarding landscaping works, highway alterations, the construction method statement, tree protection, site remediation, the provision of vehicle charging points and drainage are specified as pre-commencement conditions as they are considered fundamental to the development permitted.

Conclusion

39. For the above reasons and having considered all other matters raised I conclude that the appeal should succeed and planning permission be granted.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development to which the permission relates shall be carried out in accordance with the following approved plans and specifications: 2170-021B - Proposed Site Layout Plan; 2170-022 - Proposed Floor Plans to Units 1-4; 2170-023A - Proposed Floor Plan - Unit 5; 2170-024 - Proposed Elevations to Units 1-4; 2170-025A - Proposed Elevations to Unit 5; 2170-026A - Contextual Elevations; 2170-027A - Outer East Elevation and Outhouses.
- 3) No development shall commence until there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping. The scheme shall confirm tree and plant species, sizes, numbers and planting densities, any earthworks required, the installation of boundary treatments and indications of all existing trees and hedgerows on the land, identifying those to be retained. It shall also confirm the timing of works. Thereafter development shall be carried out as approved.
- 4) Prior to the commencement of any external walls, sample panels of the proposed stonework (in relation to the dwellings, outbuildings and boundary walls) and other external walling and roofing materials shall be made available on site for inspection and shall be approved in writing by the Local Planning Authority. The sample panels shall measure no less than 1 square metre in area and demonstrate the type, size, colour, pointing, dressing and coursing of the stone to be used. Thereafter development shall be carried out as approved.

- 5) All doors and windows shall be framed in timber and set back within reveals by at least 75mm and thereafter retained as such for the life of the development.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) no windows or doors, extensions, additions or alterations to the roof, porches, garages and other outbuildings, chimneys and flues, solar PV and thermal panels and wind turbines shall be erected on, or within the curtilage of the dwellings hereby permitted.
- 7) The windows to the west elevation of the end terrace dwelling hereby approved (as shown on drawing numbers 2170-022 and 2170-024) shall be non-opening and obscurely glazed to at least level 3 of the Pilkington Scale of privacy and thereafter retained as such for the life of the development.
- 8) Prior to the commencement of any external walls, a schedule of measures to be incorporated into the dwellings to ensure that internal noise levels comply with BS8233:2014 shall be submitted and approved in writing by the Local Planning Authority. Such measures shall be based upon the results of an acoustic assessment relating to road traffic noise carried out by a qualified acoustic consultant. Thereafter development shall be carried out as approved.
- 9) Prior to occupation of any dwelling to which this permission relates, a validation report shall be submitted to and approved in writing by the Local Planning Authority, demonstrating that internal noise levels within the dwellings comply with BS8233:2014.
- 10) No construction activity shall take place outside the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturday and not at all on Sunday and public holidays.
- 11) No development shall commence until the following details including timing of implementation have been submitted to and agreed in writing by the Local Planning Authority:-
 - i) The Orchard Lane / Main Street southern junction improvement scheme
 - ii) The Orchard Lane / Main Street northern junction improvement scheme
 - iii) The improvement of the existing site access to North Yorkshire County Council's standard detail E6.

The development shall be carried out as approved and thereafter retained.

- 12) The final surfacing of any private access within 6 metres of the public highway shall not contain any loose material that is capable of being drawn on to the public highway.

- 13) 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) the areas shown on drawing 2170-021B (Proposed Site Layout Plan) for parking spaces, turning areas and access shall be kept available for their intended purposes at all times.
- 14) No phase of development shall take place until a Construction Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for the following in respect of each phase:
 - a. the parking of vehicles of site operatives and visitors
 - b. loading and unloading of plant and materials
 - c. storage of plant and materials used in constructing the development
 - d. erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction
 - g. a scheme for recycling/disposing of waste resulting from demolition and construction works
 - h. HGV routing to avoid Orchard Lane.

Thereafter the approved statement shall be adhered to throughout the construction period for the phase.

- 15) Prior to commencement of development a scheme for the provision of electric vehicle charging points to serve the dwellings hereby permitted shall be submitted for the written approval of the Local Planning Authority. Thereafter the charging points shall be implemented as approved prior to the occupation of the respective dwellings they are intended to serve.
- 16) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 17) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved tree protection plan. The level of the land within the fenced areas shall not be altered without the prior written consent of the Local Planning Authority.
- 18) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially

contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

i) a survey of the extent, scale and nature of contamination;
ii) the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground waters and surface waters; ecological systems; and archaeological sites and ancient monuments.

- 19) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority] before the development [or relevant phase of development] is occupied.
- 20) 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 [or relevant phase of development] is resumed or continued.
- 21) No development shall take place until a Foul and Surface Water drainage plan has been submitted to and approved in writing by the Local Planning Authority. With respect to surface water such plan shall demonstrate:
- The results of infiltration tests to determine the acceptability of soak away drainage; and if not acceptable:
 - On site storage
 - Rate of discharge
 - Outfall Location
- With respect to foul water the plan shall include details of any balancing works and off-site works.

Thereafter development shall be carried out in accordance with the approved plan prior to any of the dwellings being brought into occupation.