
Appeal Decision

Site visit made on 23 August 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 31 October 2016

Appeal Ref: APP/N2739/W/16/3151778

Villa Nursery & 31 York Road, Riccall, Selby, YO19 6QG

- 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 & Mrs K & J Parish against the decision of Selby District Council.
 - The application Ref 2015/0317/OUT, dated 20 March 2015, was refused by notice dated 21 January 2016.
 - The development proposed is demolition of existing bungalow, garage and nursery buildings and erection of residential development.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing bungalow, garage and nursery buildings and erection of residential development at Villa Nursery & 31 York Road, Riccall, Selby, YO19 6QG in accordance with the terms of the application, Ref 2015/0317/OUT, dated 20 March 2015, subject to the conditions set out in the schedule below.

Procedural Matters

2. The planning application was submitted in outline with all matters reserved. I have considered the appeal on this basis. A layout plan showing how a development of 23 houses could be accommodated on the site was submitted with the planning application. I have treated this layout plan (1323/02A) as being for indicative purposes only.
3. The appellant has submitted a certified copy of a signed and dated Unilateral Undertaking (UU) in respect of the provision of affordable housing and a financial contribution towards waste and recycling facilities. I return to this matter below.

Background and Main Issues

4. The appeal site lies partly within but predominantly outside the defined development limits of Riccall as defined on the policies map of the Selby District Local Plan 2005 (SDLP) and therefore within the open countryside. Policy SP2 of the Selby District Core Strategy October 2013 (Core Strategy) seeks to direct the majority of new development to the Market Towns and Designated Service Villages (DSVs) and restrict development in the open countryside.
 5. The Council indicates that notwithstanding that the proposal would be contrary to policy SP2 of the Core Strategy having regard to the relationship of the site
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to the defined development limit of Riccall which is identified as a DSV in the Core Strategy, it would neither significantly harm the open countryside nor undermine the development limits. Therefore, it considers that on balance the proposal is acceptable in principle in relation to the appropriateness of the location.

6. In the light of the above therefore the main issue in this case is whether or not the proposal would represent sustainable development having regard to:
 - the risk of flooding and the provisions of the National Planning Policy Framework (the Framework); and
 - whether the proposal would affect Great Crested Newts, a protected species.

Reasons

Flood risk

7. The appeal site lies to the rear of residential properties that front York Road and Pinfold Close and is occupied by a bungalow and a number of semi derelict buildings associated with a former horticultural use. The site is located within an area which is indicated as flood zone 2 on the on-line maps of the Environment Agency (EA).
8. The Framework and the Planning Practice Guidance (PPG) require a sequential, risk based approach to the location of development. The Framework indicates that the aim of the sequential test is to steer new development to areas with the lowest probability of flooding. It also indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG indicates that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within flood zones 2 and 3. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
9. In its consideration of the planning application the Council concluded that having regard to the sites location within flood zone 2 the proposal failed the sequential test because there were two other sequentially preferable sites by virtue of them lying within flood zone 1 which were of a sufficient size to accommodate the development proposed. However, since then the appellant indicates that further consultation has taken place with the EA regarding the actual probability of flooding on the site. This followed the EA's acknowledgement that two other sites which are adjacent to the appeal site and indicated as within the same flood zone were, based on actual probability, at a lower risk of flooding than indicated on the flood zone maps and therefore the residential development proposals on these sites did not require a sequential test to be undertaken. In relation to the appeal site the evidence indicates that the land level is higher than the projected worse case flood event scenario and the EA has confirmed that in such circumstances the appeal site should be considered in a similar way to that of the adjacent sites.
10. From the evidence before me therefore, I am satisfied that based on actual probability the appeal site is at the lowest risk of flooding and it is not therefore necessary in this case to apply the sequential test. Accordingly, the proposal represents an acceptable form of development having regard to the risk of flooding and the provisions of the Framework.

Protected Species

11. Circular 06/2005¹ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
12. The planning application was accompanied by an Extended Phase 1 Habitat Report which described and evaluated the ecological resources within the site and nearby and set out recommendations for any mitigation required. In relation to Great Crested Newts the report indicated that there were no water bodies within 500m of the site and that it was unlikely that Great Crested Newts would use the terrestrial habitats. However, representations from an interested party indicated that there were garden ponds located within nearby residential properties that were known to have populations of amphibians. Accordingly, in its consideration of the planning application the Council concluded that on the basis of the evidence available to it at the time it could not be demonstrated that the proposal would not harm these protected species nor that the three statutory tests set out within the Habitats Regulations could be met.
13. The appeal documentation was accompanied by a Great Crested Newt Survey. This indicates that whilst the ponds identified may be a suitable habitat for Great Crested Newts no evidence of their presence was found and therefore there will be no negative impact upon the conservation status of any local Great Crested Newt population and that consequently a Natural England development licence in respect of Great Crested Newts would not be required. I have not been provided with any evidence to indicate otherwise. Accordingly, on the basis of the evidence before me I am satisfied that the proposal would not harm Great Crested Newts, a protected species and that therefore there would be no conflict with the Habitats Regulations.
14. The proposal would therefore accord with policy SP18 of the Core Strategy which seeks to ensure the protection and enhancement of the environment and with saved policy ENV1 of the SDLP which seeks to ensure that in considering development proposals account is taken of the potential loss, or adverse effect upon, amongst other things, wildlife habitats. The proposal would also comply with the principle of conserving and enhancing the natural environment as set out in the Framework.

Unilateral Undertaking

15. I have considered the submitted UU in the light of the Framework, the PPG and the Community Infrastructure Regulations 2010 (CIL Regs). The provision of affordable housing is supported by policy SP9 of the Core Strategy and the Council's Affordable Housing Supplementary Planning Document. The financial contribution in respect of waste and recycling facilities is supported by policies ENV1 and CS6 of the SDLP and policy SP19 of the Core Strategy and the Developer Contributions Supplementary Planning Document. I am satisfied that the planning obligations in relation to these matters meet the tests in the Framework and the CIL Regs.

¹ Circular 06/2005 Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system

Other matters

16. The proposal is in outline with all matters reserved. Accordingly, the matters of access, appearance, landscaping, layout, and scale will be considered at a future stage. There is nothing in the evidence before me that would lead me to conclude that an appropriate design could not be achieved at reserved matters stage so as to ensure that no material harm would be caused to the character and appearance of the surrounding area, including the adjacent Conservation Area. The indicative layout submitted with the planning application indicated how an access could be achieved by the demolition of 31 and the provision of an access between Nos 29 and 33 and there is no substantive technical evidence to indicate that the appeal proposal would cause material harm to highway safety.
17. Concerns have been raised about the effect of the proposal on the living conditions of neighbouring residents. However, scale and layout are reserved matters and from the evidence before me there is nothing to indicate that this matter could not be adequately addressed at a later stage of the planning process.
18. There is no substantive evidence to indicate that the proposal could not be adequately drained or that it would result in subsidence.

Sustainable Development

19. Paragraph 7 of the Framework sets out three dimensions of sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform an economic, social and environmental role. These roles are mutually dependent and should be jointly sought.
20. In terms of the economic and social role, there is no dispute between the main parties that the appeal proposal would provide economic and social benefits. I see no reason to take an alternative view. With regard to the economic role it would provide housing, initially bringing employment opportunities during the construction of the houses and then providing homes whose occupiers would contribute to the local economy. The proposal would also attract payment to the Community Infrastructure Levy which would be spent on local infrastructure projects.
21. Concerning its social role the appeal proposal would provide open market and affordable housing which would contribute to the supply of housing. The site is located partly within the development limits of Ricall which is defined as a DSV in the Core Strategy where there is some scope for additional residential growth to support rural sustainability. Ricall contains a good range of local facilities and is served by regular bus services which run between Selby and York. Accordingly, the proposal would accord with the advice at paragraph 55 of the Framework that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
22. In terms of the environmental role the Council indicates that notwithstanding that the site lies partly within an area defined as open countryside the proposal would create a natural rounding off of the settlement boundary which would ensure that the development would be neither visually prominent nor appear

discordant within the landscape. Accordingly, it indicates that it considers the proposal would not cause harm to the countryside and would result in a positive environmental benefit by the removal of the existing dilapidated buildings on the site. I see no reason to take an alternative view.

23. As indicated above the proposal would be accessible by public transport. The Framework indicates, at paragraph 17, that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable. This is therefore also a benefit of the proposal. Furthermore, as I have found above the proposal would be an acceptable form of development having regard to the risk of flooding and it would not cause any harm to protected species.
24. Accordingly, bringing all of these strands together I conclude that any harm caused by the conflict with the locational requirements of policy SP2 of the Core Strategy would be outweighed by the significant social, economic and environmental benefits of the proposal meaning that it would represent a sustainable development as defined in the Framework.
25. For these reasons, material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.

Overall Conclusion

26. To conclude therefore the appeal should be allowed.

Conditions

27. The Council has suggested a number of conditions that it considers should be imposed if I am minded to approve the proposed development. I have considered both the wording and reasoning for these in the light of the Framework and the PPG and have amended some of the suggested wording to ensure compliance and for clarity.
28. The proposal seeks outline planning permission with all matters reserved. Conditions relating to the submission of reserved matters are therefore necessary. A condition relating to compliance with the site plan is necessary to provide certainty regarding the extent of the site.
29. Conditions are necessary to ensure the site is properly drained. In the interests of public health a condition is necessary to ensure that a detailed site investigation report (to include soil contamination analysis), a remedial statement and an unforeseen contamination strategy are submitted, agreed and implemented.
30. I have found that the proposal represents an acceptable form of development having regard to the risk of flooding therefore the condition suggested by the Council regarding flood compensation is not justified. Similarly the condition requiring flood mitigation measures is not necessary.

Beverley Doward

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the location plan no. 1323/01.
- 5) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 6) Before the development hereby permitted is commenced full details of the proposals for the disposal of foul sewage and surface water drainage, including the results of any necessary percolation tests, shall be submitted to and approved in writing by the local planning authority. The dwellings hereby approved shall not be brought into use until the approved scheme for the discharge of surface and foul water has been implemented. The implemented scheme shall thereafter be retained.
- 7) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The surface water drainage design should demonstrate that the surface water runoff generated during rainfall events up to and including the 1 in 100 years rainfall event, to include for climate change and urban creep, will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The approved drainage system shall be implemented in accordance with the approved detailed design prior to completion of the development.
- 8) No development shall commence on site until a detailed site investigation report (to include soil contamination analysis), a remedial statement and an unforeseen contamination strategy have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the agreed documents and upon completion of works a validation report shall be submitted certifying that the land is suitable for the approved end use.