
Appeal Decision

Site visit made on 5 January 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 30 January 2017

Appeal Ref: APP/E2001/W/16/3159940
Kilpin Close, Kilpin DN14 7TL

- 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 Mr Robert Howell against East Riding of Yorkshire Council.
 - The application Ref 15/03418/PLF is dated 4 January 2016.
 - The development proposed is erection of 5 dwellings in lieu of one consented dwelling, Plot 8 (of planning permission ref: 07/04219).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 5 dwellings in lieu of one consented dwelling, Plot 8 (of planning permission ref: 07/04219), in accordance with the terms of the application Ref: 15/03418/PLF and subject to the conditions set out in the schedule attached to this Decision Letter.

Preliminary Matter

2. The Council did not issue a decision within the prescribed period. Therefore, the appellant exercised his right to appeal against the failure of the Council, as the local planning authority, to determine the application. The Council's appeal statement states its concerns regarding the appellant's failure to submit an adequate flood risk assessment or an affordable housing contribution. Furthermore, the Council has concerns relating to sustainability, character and appearance and the living conditions of future occupiers with regard to outlook. The Council has provided evidence in its Statement and, having reviewed the evidence before me, I am satisfied that these are the main concerns.

Main Issues

3. I have had regard to all of the evidence and consider the main issues to be:
 - whether or not the proposal would constitute sustainable development, having regard to relevant national and local policies;
 - whether or not sufficient information has been submitted in order to appropriately assess the proposal with regard to flooding;
 - whether or not the proposal is to make a contribution to affordable housing;
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on the living conditions of future occupiers, with regard to outlook.
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Reasons

Sustainable development

4. The principle of development on the site was established in the previous development plan comprising of the Joint Structure Plan and Boothferry Local Plan, which allocated the site for development. However, since the submission of the application which is the subject of this appeal, the development plan for the area has changed. The East Riding Local Plan Strategy Document (SD) was adopted in April 2016 and the East Riding Local Plan Allocations Document (AD) was adopted in July 2016. In policy terms, this has resulted in the appeal site being located in the countryside. Therefore, in that context, the proposed development would be contrary to Policies S3 and S4 of the SD.
5. Notwithstanding this, the appellant points to supporting text for Policy S4 which refers to exceptions where development in the countryside may be acceptable. These include where development would be of an appropriate scale to its rural location, would be in keeping with its surrounding built and landscape character, would have a limited impact on the local road network and re-use previously developed land.
6. The appeal site has an extant and implementable residential planning permission and it forms part of a wider, partially developed site on previously developed land. From what I have seen and read, this has emerged from its redundant former use. Furthermore, in my view, the proposed development would be appropriate in scale and relate well to the other parts of the approved development on the surrounding area. I note that there are no highway objections to the scheme nor are there any material issues relating to flood risk.
7. Whilst the proposal would be development in the countryside in the context of the up-to-date development plan, I find that it reasonably constitutes an exception to Policy S4. The proposal would be a reasonable and appropriate alternate development of the site which has an extant residential planning permission. Given the context and site history, the proposal would integrate well with the surrounding development area and would have no substantial conflict with other relevant local planning policies.
8. Consequently, I conclude that the proposal would be an acceptable exception to policy with regard to development in the countryside and it would therefore comply with the aims of Policies S1, S2 and S4 of the SD. These policies, amongst other matters, set out the types of development that would be acceptable in the countryside and provide guidance on the circumstances where new development would be acceptable.

Flood Risk

9. The Council argues that a flood risk sequential test was required as the appeal site is in Flood Zone 2. I note that as a result of previous planning applications and approvals, the wider development area, including the appeal site, has been subject to a Flood Risk Assessment and sequential test. Furthermore, I have seen no evidence to suggest that the flood risk situation has worsened since the time of that assessment. Whilst I appreciate that part of the wider development site is situated in Flood Zone 3, the proposed dwellings would occupy an area situated in Flood Zone 2 which, in flood risk terms, has been previously found to be acceptable for development.
10. As a result, I find a further flood risk assessment and sequential test unnecessary and that the findings of the previous flood risk assessment and submitted by the

appellant are sufficient to indicate that the proposed development would not result in any material harm with regard to flooding. Furthermore, based on the evidence before me, I am satisfied that mitigation measures set out in the existing flood risk assessment, particularly those relating to floor levels, would be sufficient to address concerns raised and would be secured by condition.

11. Consequently, I conclude that the proposal would have no material adverse effect on flood risk. Therefore, it would comply with Policy ENV6 of the SD and the Framework. Amongst other matters, this policy and guidance seeks to ensure that development does not result in unacceptable consequences, including flood risk, to its users, the wider community and the environment.

Affordable Housing

12. The Council's Affordable Housing Supplementary Planning Document (SPD) states that where a site falls under the affordable housing threshold but is part of a wider site which would be above the threshold, such a proposal will be required to provide affordable housing. The proposal would take the total number of dwellings on the wider development to 13 units which would be above the affordable housing threshold set out in Policy H2 of the SD. I note that the Council is seeking a contribution towards affordable housing from the proposal which amounts to £69,125.
13. The appellant has provided a development viability appraisal which indicates that the proposal has marginal viability. Therefore, the appellant argues that there is no financial means to provide the indicated affordable housing contribution. The Council's response to the viability assessment is that the appellant's land price is, in its opinion, too high and that the projected sales revenue of the proposed dwellings is overly conservative. As a result, the development should be able to provide the affordable housing contribution whilst remaining financially viable.
14. The Council and the appellant have assessed the affordable housing contribution on the basis of the 5 proposed dwellings. However, in order for the Council to be consistent in its application of Policy H2 and the SPD, I find that the assessment should have been undertaken on the basis of an affordable housing contribution of 25% across the wider development site (e.g. 3.25 dwellings). Therefore, in my estimation, the contribution sought should be substantially higher than £60,125. Notwithstanding this, I find the sales revenue for the proposed dwellings indicated in the appellant's viability appraisal to be at a reasonable level. Whilst there are differing views between the Council and appellant on elements of the appraisal, I am satisfied that a contribution for affordable housing, as the Council indicates, would not be achievable without having an unacceptable impact on the economic viability of the proposal.
15. Consequently, I conclude that the affordable housing contribution, as sought by the Council, would have an unacceptable impact on viability on the proposal. Therefore, the proposal would comply with Policy H2 of the SD, the SPD, the Council's Affordable Housing Addendum and the Framework. Amongst other matters, this policy and guidance seeks to ensure that the requirement for affordable housing does not unacceptably impact on deliverability and viability.

Character and appearance

16. The dwelling approved on Plot 9 has a garden area significantly larger than most of the other dwellings within the approved development. The proposal would provide five dwellings on the existing Plot 9, consisting of two semi-detached houses and three detached houses. The Council argues that the proposed development would result in a confused layout of buildings with garage blocks positioned in prominent

locations in front of dwellings and that this would be harmful to the appearance of that part of the development and would not constitute high quality design.

17. The proposed layout would be different to the approved single dwelling in terms of its relationship to the wider development. However, I find that the proposed layout would be consistent with the wider development. Although on smaller plots, the proposed dwellings would be appropriate in size and scale to the dwellings approved on the wider development. Furthermore, the proposed dwellings would maintain the established pattern of development on the site. Whilst the projection of garage blocks into the streetscene would not be ideal in terms of layout and appearance, there would be consistency with Plot 5 of the wider development. Moreover, such a layout is not unusual in new developments.
18. Consequently, I conclude that the layout, appearance, size and scale of the proposed dwellings would have no materially harmful effect on the character or appearance of the area. Therefore, it would comply with Policy ENV1 of the SD. Amongst other matters, this policy seeks to ensure that development optimises the potential of its site and has regard to the character and appearance of its surroundings.

Living conditions: outlook

19. The position of the garage blocks in front of the proposed dwellings on plots 8, 9, 11 and 12 would, in the Council's view, create an adverse effect on the outlook from the proposed dwellings. As a result, the spacious nature of the development would be lost and the poor design would have a material impact on the outlook of future occupiers.
20. Whilst the garage blocks would, to a limited degree, be in contrast to many parts of the wider development, the effect of the design and layout of the proposed development would not be of such significance as to have any substantive effect on the outlook of future occupiers. I appreciate that the distances between the garage blocks and the proposed dwellings are, in some cases, less than 5 metres, I note that the rooms affected would be non-habitable. Therefore, the impact of the garages would be less than significant and would not result in any material harm to outlook.
21. Consequently, I conclude that the proposal would have no materially harmful effect on the living conditions of future occupiers with regard to outlook. Therefore, it would comply with Policy ENV1 of the SD. This policy, amongst other matters, seeks to ensure that development optimises the potential of the site and has no materially detrimental effect on the living conditions of existing and future occupiers.

Conditions

22. I have had regard to the planning conditions that have been suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered the suggested conditions to better reflect the relevant parts of the Planning Practice Guidance (PPG).
23. In addition to the standard implementation condition (1), I have imposed conditions specifying the approved plans (2) in order to provide certainty and detailing external surface materials (3) in the interests of character and appearance. Conditions relating to foul and surface water drainage (4 and 5) and hard and soft landscaping (6 and 7) are necessary and reasonable in the interests of living conditions and character and appearance. Furthermore, conditions relating to the provision of an access road (8) and parking space (9) on the site are

required for reasons of highway safety. Conditions dealing with flood mitigation measures (10) and the removal of permitted development rights (11) are necessary and reasonable in the interests of the living conditions of future occupiers and character and appearance. Whilst the PPG indicates conditions relating to the removal of permitted development rights should only be imposed in exceptional circumstances, I find there to be so in this case.

24. For the reasons set out above regarding development viability and affordable housing, I have not imposed the Council's suggested condition relating to such matters.
25. It is essential that the requirements of Conditions 3, 4 and 6 are agreed prior to development commencing to ensure an acceptable development in respect of character and appearance and living conditions.

Conclusion

26. The proposal would provide an acceptable and appropriate alternative development of the site which has an extant residential planning permission. Whilst not providing any affordable housing contribution due to viability, it would provide four additional dwellings of a size, scale, layout and appearance which would complement the wider development of the area. Furthermore, from what I have seen and read, the proposal would not result in any material harm that would outweigh its benefits.
27. Therefore, for the above reasons, and having had regard to all other matters raised, I conclude that the appeal is allowed and planning permission is granted.

Andrew McCormack

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: RH393-A306 P1 'Location Plan'; RH393-A303 P2 'Proposed Site Plan'; RH393-A305 P2 '3D Site Visual'; BSA79-A079 'Plot 8 – Proposed Elevations and Floor Plans'; BSA78-BSA78 'Plot 9 & 10 – Proposed Elevations and Floor Plans'; BSA57-A057 'Plot 12 – Proposed Elevations and Floor Plans'; BSA81-A081 'Plot 11 – Proposed Elevations and Floor Plans'; RH393-A220 Rev P2 'Proposed Garages Elevations and Plan'; BSA TG-A1-1 'Proposed Twin Garage Elevations and Plan'; and BSA D-S-A2-1 'Proposed Double and Attached Single Garage Elevations and Plan'.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted 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.
- 4) No development shall take place until details of the proposed means of disposal of surface water drainage, including details of any balancing works and off-site works have been submitted to, and approved in writing by, the local planning authority. Furthermore, unless otherwise approved in writing by the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.
- 5) The site shall be developed with separate systems of drainage for foul and surface water on and off-site.
- 6) No development shall take place until full details of both hard and soft landscape works for the whole site together with a programme of implementation have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved prior to the occupation of any part of the development or as may be otherwise agreed in writing by the local planning authority. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance. These details shall include:
 - i) means of enclosure and retaining structures;
 - ii) hard surfacing materials;
 - iii) planting plans.
- 7) If within a period of 5 years from the date of the planting of any tree or shrub that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective) another tree or shrub of the same species, size and maturity as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
- 8) Unless otherwise agreed in writing with the local planning authority, no dwelling on the site shall be occupied until that part of the service road which provides access to it has been constructed in accordance with the approved plans. The service road as constructed shall be retained thereafter.
- 9) No dwelling shall be occupied until space has been laid out within the site for vehicular access and parking in accordance with the approved plans and that this space shall thereafter be kept available at all times for such purposes.

- 10) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) submitted by BWB Consulting, 2nd Revision. Finished floor levels on all dwellings are to be set no lower than 4.6 metres above Ordnance Datum (AOD). The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.
- 11) 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 fences, gates, walls or any other means of enclosure shall be erected or constructed within any service strip so identified in the approved plans without the prior express consent in writing of the local planning authority.

END OF SCHEDULE