The Planning Inspectorate

Appeal Decision

Site visit made on 2 July 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 August 2019

Appeal Ref: APP/E2734/W/19/3224226
Oak Tree House, Oak Road, Cowthorpe LS22 5EY

- 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 S Watson against the decision of Harrogate Borough Council.
- The application Ref 18/02331/OUT, dated 6 June 2018, was refused by notice dated 14 February 2019.
- The development proposed is an outline application for the erection of two dwellings, with all matters reserved save for access.

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of two dwellings on land at Oak Tree House, Oak Road, Cowthorpe LS22 5EY in accordance with application Ref 18/02331/OUT dated 6 June 2018 subject to the conditions set out in the Schedule below.

Preliminary Matter

2. The Council's officer report on the application makes reference to an emerging Local Plan and in particular to criteria set out in a draft policy, GS2: Growth Strategy to 2035. It is suggested by both parties that limited weight may be attributable to emerging policies. However, none is cited in any of the Council's reasons for refusing permission, and, although extracts have been cited and discussed, no copies of any emerging policies have been supplied in the course of the appeal. Accordingly I do not attribute any weight to those emerging policies in this appeal.

Main Issues

3. The Council's first reason for refusing permission for the proposed development refers to the visual amenity and countryside setting of the village of Cowthorpe, and the proposed location of the development in the countryside with no pedestrian footway into the village. The Council's second reason for refusal refers to the proposed loss of protected trees and hedgerow species in order to facilitate access to the proposed development. Accordingly the first main issue in the appeal is the suitability of the appeal site for housing, including the proposed access arrangements including the tree loss, and the effect of the proposed development on the character and appearance of the surrounding area.

4. The Council's third reason for refusing permission refers to insufficient information in relation to protected species and a potential biodiversity habitat

having been provided. Consequently the second main issue in the appeal is the effect of the proposed development on protected species and priority habitats.

5. The Council's first reason for refusal appears incomplete but appears to acknowledge that, notwithstanding an existing supply of housing in excess of 5 years in the local area, relevant planning policies relating to the supply of housing outside the confines of existing settlements are nevertheless out of date. A consequent issue in the appeal then is whether this is so and, if it is, and if the proposals are contrary to those policies, whether any adverse effects of granting permission would nevertheless significantly and demonstrably outweigh the benefits of the proposed development, having regard to the National Planning Policy Framework ('the Framework') particularly by reference to paragraph 11.

Reasons

Suitability of the site including effects on character and appearance, including access and the loss of trees

6. The small settlement at Cowthorpe is in the countryside, not far from Tockwith or Wetherby, but itself lacking all but the most basic community facilities. I saw that it had a post box, a village notice board, and a small memorial garden area adjoining the church. The telephone box appeared to have been decommissioned. The settlement is mostly linear in character, with most existing dwellings lying alongside Oak Road, but with houses also under completion along War Field Lane to the southwest of the settlement. Turning sharply eastwards out of the village at its northern end, the Oak Road becomes Tockwith Lane, and rises quite steeply through the arched canopy of an avenue of trees. At the top of the bank on the left lies the access to the Old Rectory to the north of the settlement, but otherwise development is largely concentrated alongside the lower land of Oak Road, with new development taking place on War Field Lane.

7. Between the Old Rectory to the north and the developments at War Field Lane to the south, the appeal site is one of a number of fields that lie to the eastern rear of the properties on Oak Road. The appeal site is currently accessed from Oak Tree House, which lies alongside Oak Road, but with the proposed access to the development to be taken from the south side of Tockwith Lane, towards the easternmost extremity of the appeal site. The field slopes southwards away from the road to the north. An illustrative layout shown on the Existing Site Plan drg. no. S417-002 rev C shows the 2 proposed dwellings to be sited around halfway down the slope, with parking areas and a shared driveway above.

8. The proposed houses would adjoin existing development on the western side. To the north, beyond the road, the Old Rectory is a substantial detached building set rather apart from the village core and accessed from Tockwith Lane beyond the appeal site. The access to the proposed development would be at the furthest point of the site away from the village, albeit within the restricted speed limit zone and slightly closer to the village than the entrance to the Old Rectory.

9. The access arrangements would require the removal of some trees protected by a recent 'woodland' Tree Preservation Order, creating a gap in the hedgerow canopy, and would involve re-profiling the existing hedgerow embankment to

create an opening of around 5 metres wide as well as some crown lifting works. The proposal is to remove 4 trees in order to create the access, although the Council's arboriculturalist considers that a greater number would need to be removed, both because the trees are multi-stemmed and because the physical construction of the access, including changes to levels, may require it.

10. Policy SG3 of the Harrogate Core Strategy document ('the CS') adopted in April 2009 classifies the appeal site as countryside, the development of which will be strictly controlled. The appeal proposals do not form one of the development types encouraged by that policy, and they therefore conflict with it. Policy SG3 is consistent with the Framework to the extent that it seeks to protect the intrinsic beauty of the countryside and to avoid the unnecessary development of it. However, this has to be balanced against the Framework's policy objective of significantly boosting the housing supply. In this regard the restrictive nature of Policy SG3 is inconsistent with the Framework in that it serves to constrain the housing supply to the extent that, on the Council's case, local housing needs would not be met if it were widely applied.

11. Policy SG4 of the CS also discourages the use of greenfield land, except where in accordance with national planning policy (or certain other policies) and provides that all development proposals should integrate well with their surroundings and be appropriate to the form and character of the local area. Policy EQ2 of the CS also seeks to protect landscape character.

12. The siting of the proposed dwellings within the existing easternmost reaches of the settlement, framed by the Old Rectory and War Field Lane, and within the apparent settlement limits of the 30mph zone and the village entry sign, gives them a reasonably good relationship with the settlement. All matters are reserved save for access, but the indicative plans appear to show the proposed dwellings facing inwards towards the settlement, and from these I consider that a reasonably cohesive relationship could be established. However, they do rely on an access without pedestrian facilities that faces away from the village, and this considerably reduces their scope to integrate effectively with the settlement. The 'urbanising' effect of the necessary tree loss, and developing what is currently an attractive green field providing a pleasant setting to the settlement, would also be rather detrimental to the character of the landscape.

13. On balance therefore I conclude that the dwellings would not integrate particularly effectively with the existing settlement and thus would conflict with policies SG4 and EQ2.

14. 'Saved' Policy HD20 of the Harrogate District Local Plan adopted in 2001 and Selective Alteration of 2004 ('the LP') also seeks to protect local character, and policy HD13 provides that the loss of trees that contribute to such character or setting will not be permitted. Although the effects would be relatively limited and the overall impression of the arched canopy to the road at the edge of the village would be retained to an appreciable degree, the removal of a section of the hedgerow and the protected trees and their replacement with the hardstanding of the access drive would adversely affect the character of this part of Tockwith Lane. On balance I therefore find that there would be harm to the policy objectives of HD20 and HD13.

Biodiversity

15. It is suggested by the Council that the hedgerow may amount to an 'important' hedgerow for the purpose of the relevant Regulations[1]. In part this appears to relate to its historical form and purpose, but the suggestion also arises as a result of the number of woody species present. Although, as the Council suggest, there are other features of the hedge which might reduce the qualifying numbers of woody species, it appears to me likely that the hedge meets the qualifying requirements of the relevant Regulations and, in the absence of any contrary submission by the appellants concerning the presence of woody species, I have proceeded to determine the appeal on this assumption.

16. The hedgerow, which the Council identify as a BAP priority habitat, attracts the protection of LP Policy NC4, which seeks to avoid the loss of semi-natural habitats which are important for nature conservation, as well as CS Policy EQ2 which seeks more generally to protect the Borough's natural environment and to increase wildlife habitats and species. If the remaining hedgerow were to be managed to be brought into good condition as a native hedgerow then the loss caused by the creation of the 5m gap to provide the access would be partially mitigated but not avoided.

17. Turning to Great Crested Newts, a protected species, the Council consider that insufficient information has been provided to assess any impacts. The appellant's case, having conducted a field survey and assessment in accordance with Natural England and CIEEM Guidelines, is that there are no ponds suitable for Great Crested Newts within 500m of the site, and that the closest pond to the site, 140m away, is in the final stages of succession. On this basis I conclude that there is not a reasonable likelihood of Great Crested Newts or other protected species being affected by the development proposed.

18. Paragraph 175 of the Framework advises that permission should be refused where significant biodiversity harm would arise. There is no suggestion by the Council that significant biodiversity harm might arise from the loss of the section of hedgerow. Measures to mitigate the loss can be taken, and appropriately required as part of the reserved matter of landscaping. Accordingly I conclude on this issue that there is no conflict with the Framework but that there would be some conflict with the more stringent requirements of LP Policy NC4, to which I accord moderate weight.

Housing land supply and the 'tilted balance'

19. The Council's case is that it has an adequate supply of housing land in the area, although the maintenance of this supply relies on granting permissions contrary to existing policy. At the time of determining the application, the Council's position was that it had 5.56 years' supply of deliverable housing land, and no dissension from this position was taken by the appellant when the appeal was made. During the course of the appeal, however, the Council provided an updated Housing Monitoring report, suggesting that the existing supply is now in the order of 6.89 years. This is now disputed by the appellants, who consider that there is a marginal 5 year supply at best.

[1] The Hedgerows Regulations 1997

20. The relevance of this is that if the supply is less than 5 years then the 'tilted balance' presumption of paragraph 11(d)(ii) of the Framework comes into operation (it not being contended that there are any policies in the Framework operating to protect areas or assets of particular importance providing a clear reason for refusing the development proposed). However, the Council accepts that the 'tilted balance' provisions nevertheless apply because the most important policies for determining the appeal are out-of-date. Nonetheless the extent of the benefit of the development, providing 2 additional houses, has to be assessed against the background of the existing supply position.

21. Taking the Council's case on housing supply at its highest, and mindful of the primacy of the development plan, I have nevertheless come to the conclusion that the benefits of the proposed development are not clearly and demonstrably outweighed by the policy conflicts and harm caused.

22. Government policy as expressed in the Framework is to significantly boost the supply of homes, and the proposed development would make a small but measurable contribution to this objective. Although I do not agree with the appellants that the Council do not have at least a 5 year supply of housing, and agree with the Council that it is closer to 7 years, in the absence of updated policies providing for the allocation of housing land the maintenance of the supply position does rely on the release of windfall sites such as this one.

23. I have considered that the proposed development would conflict with development plan policies that seek to protect habitats, avoid tree loss, protect landscape character and to avoid greenfield developments. However, the policy conflicts that would arise are not substantial, and the proposed development could achieve a reasonably cohesive relationship with the existing settlement area. I have considered the other matters raised by those making representations, and there are no other objections to the development that cannot adequately be overcome by the imposition of planning conditions. Although not supported by the relevant planning policies for the area, the development would not be so incongruous or unduly harmful as to significantly or demonstrably outweigh its benefits.

Conditions

24. The Council have suggested a number of conditions in the event that permission is granted, and I agree that these are necessary, subject to some re-wording where appropriate. Conditions requiring the submission of the matters reserved for approval, requiring compliance with the application plans, and requiring the development to be implemented reasonably promptly are necessary in the interests of certainty. Several revised plans have been provided, although not forming part of the original application, and I shall require compliance with these. Conditions requiring surveys and tree protection are necessary in the interests of ecology and the retention of the remaining tree belt and hedgerow. The archaeological significance of the site requires a written scheme of investigation.

25. The safety of highway users requires precautions to prevent mud, and control of the verge crossing works, visibility splays and parking and turning arrangements. However, I have not had sight of the published 'specification' of the local highway authority and accordingly I leave those details to be approved. The vulnerability of the proposed end users requires an investigation into land contamination and any necessary remediation. Surface water disposal

requires the consideration of details to provide adequate drainage. Electric vehicle charging points are required in the interests of air quality and sustainable transport.

Conclusion

26. For the above reasons, therefore, I consider that the proposed development would conflict with the development plan for the area. Government policy seeking to boost the supply of housing is a significant material consideration in favour of the development, however, and the policies of the development plan seeking to avoid development on greenfield sites are out of date. The adverse impacts of granting permission would not significantly outweigh the benefits, and accordingly the appeal is allowed, subject to the conditions in the Schedule below.

Laura Renaudon

INSPECTOR

SCHEDULE OF CONDITIONS

1. Details of the 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 takes place 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 3 years from the date of this permission.

3. The development hereby permitted shall take place not later than 2 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 following approved plans and drawings:

    - Site Location Plan Drg No: S417 001 Rev C dated 14 May 2018, 1:1250 at A3
    - Existing Site Plan Drg No: S417 002 Rev C dated 11 May 2018, 1:200 at A1
    - Tree Impact Assessment and Protection Plan Drg No: BA6800AIA dated 2 June 2018, 1:200 at A1
    - Access Arrangements Drg No: 18145/001 Rev B dated 14 December 2018, 1:500 at A3
    - Access Arrangement – Steel Sheet Piled Retaining Structure Details Drg No: 18145/005 dated 18 December 2018, 1:200 at A1

5. An Ecological Survey and Appraisal shall be submitted for the written agreement of the local planning authority prior to the submission of any reserved matters application, setting out any mitigation measures required during construction in relation to the protection of bats, nesting birds, native vegetation and great crested newts.

6. (a) No operations shall commence on site or any development be commenced before a tree report detail including root protection area (RPA) fencing in line with the requirements of British Standard BS 5837: 2012 (section 6.2.2 figure 2) Trees in Relation to Construction - Recommendations, or any subsequent

amendments to that document, around the trees or shrubs or planting to be retained, as indicated on the approved plan and for the entire area as specified in accordance with BS 5837:2012, has been submitted to and approved by the local planning authority. All such fences shall be erected before any development begins, and maintained thereafter until all development the subject of this permission is completed.

(b) No operations shall commence on site in connection with the development hereby approved (including any demolition work, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the root protection area (RPA) works required by the approved tree protection scheme and ground protection detail (no dig) are in place. The level of the land within the fenced areas shall not be altered without the prior written consent of the local planning authority.

7. A) No demolition/development shall commence until a Written Scheme of Investigation of archaeology that may be present on the site has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

   (i) The programme and methodology of site investigation and recording

   (ii) Community involvement and/or outreach proposals

   (iii) The programme for post investigation assessment

   (iv) Provision to be made for analysis of the site investigation and recording

   (v) Provision to be made for publication and dissemination of the analysis and records of the site investigation

   (vi) Provision to be made for archive deposition of the analysis and records of the site investigation

   (vii) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

   B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

   C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

8. There shall be no access or egress by any vehicles between the highway and the application site until details of the precautions to be taken to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site have been submitted to and approved in writing by the local planning authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the local planning authority. These precautions shall be made available before any excavation or depositing of material in connection with the construction commences on the site and be kept available and in full working order and used until such time as the local planning authority has agreed in writing to their withdrawal.

9. There shall be no excavation or other ground works, except for investigative works, or the depositing of material on the site until the access to the site has been set out and constructed in accordance with a scheme that shall have been submitted to and approved by the local planning authority, to include the following requirements:

    - Details of the construction of the crossing of the highway verge
    - Details of the provision and subsequent maintenance for preventing surface water from the site/plot discharging onto the existing highway
    - The final surfacing of any private access within 6 metres of the highway shall not contain any loose material that is capable of being drawn on to the existing highway.

10. There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility of 2.4 metres x 56 metres measured along both channel lines of the highway. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

11. There shall be no excavation or other ground works, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works hereby permitted until full details of the following have been submitted to and approved in writing by the local planning authority:

    (i) vehicular, cycle, and pedestrian accesses

    (ii) vehicular and cycle parking

    (iii) vehicular turning arrangements

    (iv) manoeuvring arrangements

    (v) loading and unloading arrangements.

12. No part of the development shall be brought into use until the approved vehicle access, parking, manoeuvring and turning areas approved under condition number 11 have been constructed in accordance with the submitted drawing. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

13. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced and approved in writing by the local planning authority.

    Where remediation is necessary a remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other

than that required to carry out remediation, unless otherwise approved in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be produced and approved in writing by the local planning authority prior to the commencement or resumption of development.

14. No development approved by this permission shall be commenced until the local planning authority has approved a Scheme for the provision of surface water drainage works. Any such Scheme shall be implemented to the written satisfaction of the local planning authority before the development is brought into use.

15. The suitability of new soakaways, as a means of surface water disposal, shall be ascertained in accordance with BRE Digest 365 to the written satisfaction of the local planning authority prior to the commencement of development.

    If the soakaway is proved to be unsuitable then peak run-off must be attenuated to 70% of the existing rate (based on 140 l/s/ha of connected impermeable area).

    If the location is considered to be detrimental to adjacent properties then amended proposals showing how the Site is to be drained shall be submitted and approved by the local planning authority before development is commenced.

16. As part of any application seeking approval of the reserved matter of appearance, one electric vehicle charging point shall be provided for each residential unit with dedicated parking space. The cable and circuitry ratings for the charging points shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps.The charging point should be a Mode 3 with a type 2 outlet socket.