



Appeal Decision

Hearing Held on 7 August 2019

Site visit made on 7 August 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2019

Appeal Ref: APP/E2734/W/18/3219294

Hall Farm, Boroughbridge Road, Bishop Monkton, HG3 3QN

- 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 Tim Benson against the decision of Harrogate Borough Council.
 - The application Ref 16/03997/FULMAJ, dated 16 September 2016, was refused by notice dated 2 July 2018.
 - The development proposed is erection of 5 dwellings with formation of attenuation area, associated access and landscaping (Site Area 1.9 ha) (Revised scheme).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the heading above has been taken from the planning appeal form, which differs from that given on the planning application form and the Council's decision. This wording was agreed by the main parties at the Hearing.

Background and Main Issues

3. The Council accepts that its policies for the supply of housing are out of date and that the 'tilted balance' of paragraph 11(d) of the National Planning Policy Framework (the Framework) is engaged. That said, I have also had regard to the requirements of paragraph 11(d(i)) with regards to designated heritage assets.
4. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area, with due regard to the Bishop Monkton Conservation Area;
 - Flood risk;
 - Whether appropriate provision would be made for affordable housing, open space and village halls;
 - Whether the proposal would provide a safe and satisfactory access; and

- Other matters relevant to the planning balance, including benefits of the development.

Reasons

Character and Appearance

5. The appeal site consists of an open field which extends from the countryside setting of the village to Boroughbridge Road, which is one of the main roads through the village. Due to this arrangement and location, the site makes an important contribution to the rural character of this part of the village and the importance of the Bishop Monkton Conservation Area (CA) as a designated heritage asset, particularly through the view of open pastoral land which reflects the agricultural history of the CA. There are also a number of mature trees to the front of the site within the CA, which make an important contribution to the streetscape and the verdant character of this part of the village and CA.
6. The CA Character Appraisal identifies the view of the site from Boroughbridge Road as a Key View and that the site represents significant open space which should be preserved. The importance of this Key View and the contribution that the site as a whole makes to the character and setting of the CA were readily apparent on my site visit.
7. The appellant contends that views across the site are screened by the trees to the front, particularly when they are in leaf. However, the trees were in leaf at the time of my site visit and I saw that the open rural character of the appeal site was clearly visible through the trees in views from Boroughbridge Road. Furthermore, the footpath running along the boundary of the site provided open views across the field unencumbered by tree planting.
8. The proposed development would introduce built development of a suburban layout and appearance which would fundamentally change the character of the site. The proposed houses would be particularly prominent due to their location straddling a shallow ridge that runs across the site. Whilst the site slopes down to the north, this would not mitigate the prominence of the houses to the rear which would be visible beyond the ridge.
9. Although views of the wider landscape are restricted by high hedges and planting to the rear of the site, this emphasises the importance of the site in drawing the pastoral landscape into the village and the CA. Whilst the extent of the proposed built development would still enable some views through the site, this would not mitigate the harm arising from the obtrusive and incongruous form and extent of development.
10. The area to the front of the site would be kept as open space. However, the proposed access road, water attenuation pond and bunds would be readily apparent as man-made features. This would add to the harm arising from the introduction of built development into what is currently an agricultural field. Although the proposal would provide an opportunity to introduce further planting, in my view this would lead to a contrived and overly managed landscape in contrast to the current open agricultural appearance.
11. The proposed access road would pass through the root protection areas of trees located to the front of the site. Whilst the exact alignment of the access from the site entrance to the houses varies between the plans submitted by the

- appellant, it is clear that at the site entrance the road would be located in close proximity to mature trees. Reference has been made to the use of hand digging and porous surfaces to protect the trees, but no substantive evidence has been provided to demonstrate that this matter has been fully considered or would be successful. Mindful of the particular importance of the trees to the front of the site with regards to the streetscape and the CA, it has not been demonstrated that the construction of the road in such close proximity to the trees would not damage their health.
12. The projection of dwellings to the rear of the appeal site would reflect that along Claremont Lane immediately to the east. However, I saw that the extent of built development along Claremont Lane was not readily apparent from Boroughbridge Road due to limited visibility along the narrow lane and the screening provided by buildings along the street frontage. The dwellings on Claremont Lane were also effectively screened from the public footpath due to a high hedge. Whilst the projection of development along Claremont Lane may be apparent in plans of the area, this does not establish a visual context for the appeal proposal. Furthermore, Claremont Lane is not representative of the prevailing grain and extent of development in the village. The appeal proposal would represent a visually incongruous pattern of development into this sensitive landscape. Moreover, the proposal would not represent an infill site as referred to by the appellant.
13. The appellant has submitted a Landscape and Visual Impact Assessment (LVIA) which concludes that the effect of the development on views from Boroughbridge Road would be 'No Change, Low, Negligible' in part due to mitigation from tree screening and ecological enhancements. The Council has provided an LVIA in rebuttal which concludes that there would be an overall 'Major Adverse' effect on landscape character and of the site and its immediate setting. Based on what I have seen and read, the Council's assessment reflects my own observations, where the landscape sensitivity, magnitude of change and the limited effect of potential mitigation would lead to significant harm to the character of the appeal site and the setting of the village and CA.
14. Reference has been made to the potential to introduce an agricultural hedge to the front of the site which would shield views across it. However, there is no certainty that this would take place and as such I give this limited weight in my consideration of this main issue. In any event, whilst the interference with views across the site would be regrettable, such a hedge would maintain the agricultural character of the site and would not justify such an incongruous and prominent development as the appeal proposal.
15. I therefore conclude that the proposal would harm the character and appearance of the area as well as the CA and its setting. The proposal would be contrary to policies HD3, HD13, HD20 and R11 of the Harrogate District Local Plan (LP) and Policies EQ2 and SG4 of the Core Strategy (CS), which together seek to ensure that development is appropriate to the form and character of the settlement and landscape, should not harm the amenity value of rights of way, does not have an adverse effect on conservation areas, would not involve the loss of trees which contribute to the character and setting of a settlement and should protect the natural and built environment, amongst other things. The proposal would also be contrary to the advice of the CA Character Appraisal with regards to preserving or enhancing the character and appearance of the CA and its setting, and in particular the effect on Key Views.

Flood Risk

16. The dwellings are located on an area of higher ground within Flood Zone 1 and a Flood Risk Assessment (FRA) submitted by the appellant concludes the houses are not at flood risk. However, the access road leading to the dwellings passes through Flood Zones 2 and 3 where the probability of flooding is likely.
17. The Council has queried whether the Sequential Test has been properly applied in relation to the proposal. However, the houses are within Flood Zone 1 and I consider that it is reasonable to limit the Sequential Test to consideration of the access road. Based on the evidence before me, it would not be possible to create a permanent vehicular access via a sequentially preferable site.
18. However, following the application of the Sequential Test, both parts of the Exception Test need to be passed. The second part of the Exception Test is that the development must be shown to be safe for its lifetime.
19. The Planning Practice Guidance (the Guidance) states that access routes should allow occupants to safely access and exit their dwellings in design flood conditions. Vehicular access to allow the emergency services to safely reach the development during design flood conditions will also normally be required. Due to the extent of access road within Flood Zones 2 and 3 I consider that it would not ensure safe access and egress to and from the development.
20. On the submitted plans, emergency access routes were indicated to the east and west of the site. During the course of the Hearing it was confirmed that the appellant does not have permission from the land owner to use the access to the west and this element of the proposal was withdrawn.
21. The emergency access to the east would be via Claremont Lane and a private property. However, I note that at times of flooding that a flood barrier is placed across the lane so that residents of the development and the emergency services would not be able to pass along this route. Whilst the proposed dwellings on higher ground may not be affected directly by flooding and could represent a safe refuge, it has not been demonstrated that safe access and egress can be ensured to and from the development.
22. The appellant has queried the legality of the barrier across Claremont Lane with reference to previous comments from the Environment Agency. However, based on discussions at the Hearing, it would appear that these comments were made within the context of a barrier at the appeal site entrance which may affect flood storage capacity within the field, rather than a barrier at Claremont Lane. Based on the evidence before me, I have no reason to conclude that the effect of the Claremont Lane barrier should be disregarded.
23. In my view, the Guidance is clear in requiring the voluntary and free movement of people during a design flood. Residents should therefore be largely able to help themselves, rather than rely on emergency services assisting them. I acknowledge that existing residents along Claremont Lane and nearby properties work together to protect themselves and their properties at times of flooding. However, it seems to me that it would not be sensible to add to the numbers of residents who may be affected. It would also be unreasonable to add to demands on the emergency services, as well as existing residents, who will be under significant pressure at times of flooding.

24. The appellant has made reference to the first part of the Exception Test and sustainability benefits to the community which may outweigh flood risk. However, both elements of the Exception Test should be satisfied, and on the basis of my conclusions above, I do not need to consider the wider sustainability benefits with regard to this main issue.
25. I therefore conclude that it has not been demonstrated that safe access and egress can be ensured to and from the development. On that basis, the proposal would fail the Exception Test and in particular the second part with regards to showing that the development will be safe for its lifetime. The proposal would therefore be contrary to Policies EQ1 and SG4 of the CS.

Provision for affordable housing, open space and village halls

26. With regards to the provision of **affordable housing**, the appellant considers that the proposal is a minor development where a planning obligation on this matter should not be required. Furthermore, the Council's reasons for refusal refers to the floorspace of the dwellings exceeding 1,000m², which does not reflect the definition of 'major development' as given in the Framework. However, the site area would exceed 0.5 hectares and the proposal would therefore be classed as major development within the terms of the Framework. Whilst the appellant has provided a site plan showing the residential curtilages would be less than 0.49 hectares, the Framework is clear that the appropriate consideration is site area rather than curtilages. I therefore conclude that the proposal would represent major development and on the basis of the evidence before me the Council's requirement with regard to affordable housing is appropriate.
27. That said, the appellant agreed at the Hearing that he would be prepared to accept that 40% of the dwellings (i.e. 2 dwellings) on the site should be affordable housing within the terms of the Framework, particularly with regard to discounted market sales housing and other affordable routes to home ownership. As this provision would be on-site this could be enforced by an appropriate condition requiring a management plan for the provision and retention of this affordable housing. On that basis, I consider that the proposal would make suitable provision for affordable housing.
28. In respect of **open space**, the appellant has agreed that an area of 'community land' would be provided as part of the development, including the area around the proposed pond to the front of the site. The appellant confirmed at the Hearing that ongoing maintenance of this area would be funded as part of the development. I consider that this could be enforced by a suitably worded condition securing, for example, the provision of the community land and a management plan. I also note that the Council's Supplementary Planning Document (SPD) in relation to the Provision for Open Space 2015 advises that this should be provided on-site where possible and prioritise amenity greenspace - which the proposal would comply with. Based on the evidence before me, a contribution to off-site open space is not required as the proposal would make appropriate provision for on-site open space.
29. With regard to **village halls**, there is a reasonable prospect that residents of the proposal will use village halls in the area. A contribution to these facilities as required by the Council is therefore appropriate, as set out in the SPD on the Provision for Village Halls 2015. However, at the Hearing the appellant stated that he was not prepared to make this contribution as it would make the

development unviable, although no substantive evidence in respect of viability has been provided.

30. I also note that this differs from the evidence in the appellant's statement of case where he indicates that he would be prepared to accept a condition on this matter. However, the Guidance advises that a condition to require a planning obligation is only appropriate in exceptional circumstances. The circumstances of this development are not of such an exceptional nature as to justify a condition with regards to planning obligations. In the absence of a planning obligation delivering the required contribution, I conclude that the proposal does not make appropriate provision for village halls
31. Notwithstanding my conclusion with regards to affordable housing and open space, the proposal would not make an appropriate contribution to village halls and would therefore be contrary to Policy C1 of the CS with regards to providing for community needs. Whilst the proposal would comply with Policy H5 of the LP in respect of affordable housing and Policy C1 of the CS with regards to open space, this would not outweigh the conflict with Policy C1 with regard to village halls.

Access

32. Access to the site from the public highway would be via an existing field access from Boroughbridge Road, albeit with some potential widening of the access. The Council refers to a lack of evidence with regards to an appropriate visibility splay along the public highway.
33. The appellant submitted a plan at the Hearing which indicated visibility splays at the site entrance, and in particular that a 40m splay can be provided to enable views along Boroughbridge Road. At my site visit, I saw visibility for drivers emerging from the site would be extensive along Boroughbridge Road to the east, but would be restricted to a degree to the west by trees and planting, including planting on land which is not in control of the appellant. However, I saw that traffic speeds along Boroughbridge Road in the vicinity of the site were relatively low, and even allowing for on-street parking, the access would provide suitable visibility for drivers of vehicles emerging from the site.
34. Concern was also expressed in relation to the effect of the boundary wall on visibility at the access. However I saw that the wall (including gate posts) was of a height that would provide drivers with a good view of vehicles and pedestrians on Boroughbridge Road.
35. Based on what I have seen and read, I conclude at the proposal would provide safe and satisfactory access to the site. Notwithstanding my conclusions on this main issue, this does not lead me to a different conclusion with regards to access at times of flooding. Nevertheless, the proposal would not conflict with the Framework which seeks to prevent an unacceptable impact on highway safety.

Other Matters

36. The main parties disagree on whether the Council can demonstrate a 5 year supply of deliverable housing sites. The Council considers that it has a 6.89 year housing land supply as of an update report in April 2019 and that this figure has not been challenged as part of the Examination into an emerging local plan. The appellant contends that once outline planning permissions and

emerging allocations are discounted then the housing land supply would be approximately 3 years. However, even if I were to accept the appellant's figures with respect to housing land supply, the provision of 5 dwellings would be a relatively modest contribution and I therefore give this only moderate weight in favour of the appeal.

37. I acknowledge that small and medium sites can make an important contribution to meeting the housing requirement of an area, and that these are often built-out relatively quickly. Furthermore, the Framework gives great weight to the benefits of using suitable sites within existing settlements for homes. However, for the reasons stated previously, I do not consider that this is a suitable site for housing development. Therefore, consideration of this matter does not lead me to a different conclusion in respect of the proposal's contribution to housing supply in the area.
38. The dwellings would not be isolated and residents would have good access to services within the area, although this can be said of many sites on the edge of this settlement. The construction of the proposal would lead to employment and investment in the locality, although this would be to a limited degree and over a limited period of time. Residents of the proposal would also support services and facilities in the area, although mindful of the number of proposed dwellings this would be to a limited degree. Accordingly, I give these matters limited weight in favour of the proposal.
39. The provision of 2 affordable dwellings on the site would be a modest contribution to affordable housing in the area, and as such I give this moderate weight in favour of the proposal.
40. The appellant has emphasised the benefits arising from the flood attenuation measures proposed to the front of the site, including an attenuation pond and bunding. I understand that this was in response to previous discussions with the Environment Agency which identified that reprofiling the field may increase flood protection for nearby properties. However, I note that whilst the Environment Agency do not object to the proposal, they clearly state that there should be no ground raising in Flood Zone 3. The proposal would not meet these requirements, as the proposed bunds and possibly the access road would lead to increased ground levels in Flood Zone 3. I also note that the Lead Local Flood Authority has expressed concern in relation to the location of the bunds and lack of detail in relation to the standard of protection and the relationship with temporary flood defences. Read objectively and in context, the appellant's evidence in respect of flood attenuation benefits is not sufficiently robust. Due to the uncertainties in respect of the flood attenuation scheme this matter does not weigh in favour of the proposal.
41. The appellant suggested at the hearing that the matter of flood attenuation could be addressed by a pre-commencement condition with regards to the submission of a suitable scheme. However, there is a significant possibility that such a scheme could lead to major changes to the submitted layout of the site e.g. through the relocation of the attenuation pond and the bunds. In my view the flood attenuation measures are an integral part of the layout of the development and it would be inappropriate to address these at a later stage by means of a condition.
42. Reference has also been made to potential ecological enhancements including habitat corridors and additional biodiversity, but there is little evidence as to

the scale of these benefits and whether this would represent a material improvement compared to the current situation. I give these matters no more than limited weight in favour of the proposal.

Planning Balance and Conclusion

43. Notwithstanding my conclusions in respect of affordable housing, open space and access; I conclude that the proposal would lead to significant harm to the character and appearance of the area and the CA, would fail the Exception Test with regard to flooding and would not make suitable provision for village halls.
44. I am mindful of the benefits of the proposal as set out above, but for the reasons stated I give these benefits no more than moderate weight. Applying the 'tilted balance' of paragraph 11(d) of the Framework, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
45. With regard to the CA, whilst the harm arising from the development to the character and appearance of the CA and its setting would be less than substantial, I attach great weight to the conservation of this designated heritage asset in accordance with the Framework. The at most moderate weight I give to the public benefits arising from the proposal would not outweigh that harm. The proposal would therefore fail to meet the requirements of paragraph 11(d(i)) of the Framework with regard to the protection of designated heritage assets.
46. Drawing these matters together, when assessed against the development plan and the Framework as a whole, on balance, the overriding considerations are that the development would not achieve well-designed places, conserve and enhance the natural and historic environment, promote healthy and safe communities, or meet the challenge of flooding.
47. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANT:

Jason Parker
Phil Hardy
Tim Benson

Parker Planning Services
Parker Planning Services

FOR THE COUNCIL:

Gerard Walsh
Barrie Gannon
Glen Donaldson

Harrogate Borough Council
Harrogate Borough Council
North Yorkshire County Council

INTERESTED PERSONS:

Tony Garnett
Adam Potts
Martin Bethel
Dan Wright

Bishop Monkton Parish Council

Documents Submitted at the Hearing

1. Photographs submitted by the Parish Council.
2. Correspondence with the Environment Agency in respect of flood barriers and site reprofiling.
3. Amended Access Road and Visibility Splays plan ref. 2015001 050C.
4. Amended Site Layout Plan showing curtilage alteration ref. 2015001 002 Rev A.
5. Revised Layout ref. BA6438TS and Landscape Concept Plan ref. BA6438LM re. location of trees.

Documents Received Following the Hearing (by request of the Inspector)

1. Correspondence with regards to conditions, included amended list of suggested conditions and appellant's agreement to pre-commencement conditions.
2. Details of emergency access, including agreement from owners of Long Meadow.