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## Appeal Decision

Site visit made on 26 November 2019

**by F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 January 2020**

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**Appeal Ref: APP/G2713/W/19/3236864**

**Hibray, Lumley Lane, Kirkby Fleetham, North Yorkshire DL7 0SH**

- 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 George Harland, Harland Builders Ltd. against the decision of Hambleton District Council.
  - The application Ref 18/02609/OUT, dated 5 December 2018, was refused by notice dated 31 May 2019.
  - The development proposed is the demolition of existing house (Hibray) and construction of five bungalows.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The list of plans that are stated by the appellant to have been submitted with the application<sup>1</sup> do not correspond to the plans submitted with the appeal<sup>2</sup>. It has been confirmed by the appellant and the Council that the plans used in the determination of the application were Location Plan, Site Block Plan as Proposed ref 2017:64/02 Rev C and Site Layout Plan as Existing and Proposed ref 20164/01 Rev F. I have therefore determined the appeal on the basis of these plans.
3. The planning application was submitted in outline with approval sought for access only, with matters of appearance, landscaping, layout and scale reserved for future consideration. A Site Block Plan as Proposed ref 2017:64/02 Rev C and Site Layout Plan as Existing and Proposed ref 20164/01 Rev F accompanied the application. I have regarded all elements of these drawings as indicative apart from the details of the access.
4. When the application which is the subject of this appeal was submitted, a separate planning application was also submitted for the change of use of an area of adjoining land to provide a children's play area, which was proposed to be gifted to Kirkby Fleetham Parish Council for the use of the village and local school. The appellant has confirmed that this separate application has also been determined by the Council and refused planning permission, but no appeal is being pursued.

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<sup>1</sup> Location Plan, Block Plan ref 2017.64/02 and Site Layout Plan ref 20164/01.

<sup>2</sup> Location Plan, Block Plan ref 2017:64/02 Rev C and Site Layout Plan ref 2017:MC/01 Rev F.

5. The indicative plans show a footpath at the end of the new vehicular access to facilitate pedestrian access to the proposed play area. In addition, they show a footpath with direct pedestrian access from the primary school to the proposed play area. The appellant has confirmed that these elements will now not be provided as the play area is not going to be created. I have therefore determined the appeal on this basis.

### **Main Issue**

6. The main issue is the effect of the proposed development on the character and appearance of the area including (i) whether part of it would preserve or enhance the character or appearance of the Kirkby Fleetham Conservation Area (KFCA); and (ii) its effect on the setting of the KFCA.

### **Reasons**

7. The appeal site is located on the south side of Lumley Lane within the rural village of Kirkby Fleetham, the historic core of which is a designated conservation area. The roads around the village lead to a central village green. Development is arranged in a linear pattern along the outer roads and around all sides of the green apart from the south eastern side which allows views to the countryside beyond. These elements contribute to the character and appearance of the area and the special architectural and historic interest and significance of the KFCA.
8. The historic linear pattern of development is highly evident along the south side of Lumley Lane and Forge Lane where buildings of a mix of ages and styles front the highway. To the south of this main line of built form lies open countryside which is punctuated by wooded areas and mature tree belts. This provides a green buffer and setting to the southern side of the village which contributes to the significance of the KFCA.
9. The appeal site includes Hibray, a detached two storey dwelling dating from the 2000s which fronts onto Lumley Lane, and an open grassed area to the rear of the property. The open grassed area contains some mature trees and is enclosed to the sides by a combination of fences and mature hedges and trees. The boundary to the south is open allowing views to the wider countryside. The combination of a single line of built form with green open space to the rear, cause the appeal site to make a positive contribution to the character and appearance of the KFCA and its setting.
10. The proposal comprises the demolition of Hibray to allow the creation of an access into the rest of the site, the demolition of an existing outbuilding and the construction of five dwellings which, it is stated, are intended to be a mix of two and three bedroomed bungalows. It is proposed that one of the bungalows would be occupied by the current owners of Hibray.
11. The Council has no objection to the demolition of Hibray and, given its age and neutral contribution to the character and appearance of the street scene within this part of the KFCA, I have no reason to disagree.
12. The proposed access would run between the Olde Forge, a residential property to the west and Kirkby Fleetham Church of England Primary School to the east. The appellant has stated that the proposed access would meet the required standards of the local highway authority. The indicative layout shows a cul-de-sac arrangement with one bungalow and garage and store on the

- western side of the proposed access road and four bungalows on the eastern side of the proposed access road, each with two parking spaces and with three visitor parking spaces provided near to the entrance off Lumley Lane.
13. Kirkby Fleetham is defined in Policy CP4 of the Hambleton Local Development Framework Core Strategy 2007 (CS) as a secondary village. The front part of the appeal site, including Hibray, is located within the settlement development limits of the village and within the boundary of the KFCA, whilst the majority of the area to the rear of Hibray is located outside the settlement development limits of the village and just outside, and thus within the setting of, the KFCA.
  14. Policy CP4 of the CS states that appropriate proposals will be supported within the development limits and that proposals at other locations, that are beyond these limits, will only be supported under exceptional circumstances if specific exception criteria are met. The appellant does not claim that the proposed development meets any of these criteria.
  15. In addition to the above, the Council produced an Interim Policy Guidance Note (IPGN) in 2015. The IPGN was produced to align Policy CP4 of the CS with the National Planning Policy Framework (Framework). Unlike Policy CP4 of the CS, the IPGN does not seek to restrict all development to within the defined settlement development limits. It revises the settlement hierarchy, redefining Kirkby Fleetham as a service village, and states that small scale housing development will be supported where it contributes towards achieving sustainable development by maintaining or enhancing the vitality of the local community. This is generally consistent with Paragraph 78 of the Framework. Development is also required to meet six criteria in the IPGN.
  16. The Council is of the opinion that the proposed development fails to meet three of the criteria which require that development must be small in scale, reflecting the existing built form and character of the village; that it must not have a detrimental impact on the natural, built and historic environment; and that it must conform to all other relevant Local Development Framework (LDF) Policies.
  17. I recognise that the proposed development would result in a net gain of four dwellings and, as such, would be in line with the guide in the IPGN which states that small scale development would normally be considered to comprise up to five dwellings. I am also mindful of the outline nature of the scheme with only access details applied for. However, I consider that, regardless of layout, scale, appearance and landscaping, the proposed development would be likely to introduce substantive built form into a currently open area and where, combined with the creation of a new access, areas of hardstanding and other likely outdoor residential features, it would result in an inappropriate suburban incursion into this rural green space. As such, I am not persuaded that it would constitute incremental and organic growth as supported by the IPGN.
  18. Furthermore, the widened access entrance from Lumley Lane would cause the long access road and cul-de-sac nature of the proposed development to be readily visible from Lumley Lane, which would highlight its incongruity in the street scene and in the rural open space.
  19. The appellant contends that the rear line of proposed development does not intrude into open land as it does not extend beyond the car park of the public house to the west or the existing rear gardens to the east. Whilst it may be

true that the proposed development would not extend beyond the rear boundaries of these sites, from what I could see on my site visit, these areas do not have any substantial or permanent built form within them and, as such, they are essentially open spaces. I consider that the proposed development would create an additional layer of residential housing to the rear of the historic linear pattern of development on the south side of Lumley Lane. This would be wholly out of keeping with the prevailing and established pattern of development within this part of the village. On this basis, it would not reflect the existing built form and character of the village and would not meet criterion 2 of the IPGN.

20. The discordant nature of the proposed development in terms of its encroachment into the open space to the rear of Hibray and the creation of an inharmonious additional layer of housing, would result in part of it correspondingly having a detrimental impact on the identified characteristics which contribute to the character and appearance of the KFCA, and the remaining part having a harmful effect on the setting of the KFCA. This would result in demonstrable harm to this designated heritage asset and its setting and would not meet criterion 3 of the IPGN.
21. With regard to the above, the proposed development would also not conform to LDF policies which relate to general design and conservation and so would not meet criterion 6 of the IPGN.
22. I am aware that it is the intention of the proposed development to provide a mix of two and three bedroomed bungalows and that, in this respect, it would be capable of supporting the Council's aims as outlined in its Size, Type and Tenure of New Homes Supplementary Planning Document 2015 (SPD), which states that there is a requirement for more two and three bedroom market homes, more choice for older people including two bedroom bungalows for sale, and a wider tenure mix. However, as appearance, layout and scale are reserved for future consideration, this can only be given limited weight. Even if I were to accept that the proposed development would support the aims of the SPD, it would not be sufficient to overcome the fundamental objections to the proposal in relation to its impact on the character and appearance of the area.
23. Taking the above into account, I conclude that the proposed development would significantly harm the character and appearance of the area, including that part of it would not preserve or enhance the character or appearance of the KFCA and that it would have a harmful effect on the setting of the KFCA. It would therefore conflict with Policy DP32 of the Hambleton Local Development Framework Development Policies 2008 (DP) which, amongst other things, requires development to reflect local character and distinctiveness in its form and relate to and respect any historic context of the site. It would also be contrary to Policy DP28 of the DP insofar as it seeks to ensure that development preserves or enhances all aspects that contribute to the character and appearance of conservation areas. In addition, it would not accord with the Council's IPGN as referred to above. Finally, it would also conflict with the provisions of the Framework which seek to protect the significance of designated heritage assets.
24. Having regard to Paragraph 196 of the Framework, the harm caused to the significance of the KFCA and its setting would be 'less than substantial',

because it would be limited to the immediate surroundings of the appeal site and specific views into and out of the KFCa.

25. This harm needs to be weighed against the public benefits of the proposed development. The proposed development would provide a net gain of four additional dwellings which, given that it is the intention to provide a mix of two and three bedroomed bungalows, would be capable of supporting the Council's aims as outlined in its Size, Type and Tenure of New Homes SPD. Some economic and social benefits would be derived from the construction and occupation of the dwellings and there would also be some benefits in terms of any occupiers supporting local services and facilities. These benefits are reduced by the limited amount of development that is proposed but, nevertheless, carry moderate weight in its favour. However, in my view, I do not consider that these are sufficient to outweigh the harm to the KFCa and its setting that I have identified. As such, the proposed development would not comply with Paragraph 196 of the Framework.

### **Other Matters**

26. I have had regard to the fact that the appeal site is within approximately 100m of the scheduled area of the 'Motte and bailey castle and medieval settlement earthworks within Hall Garth', and given consideration to any impact of the proposed development on the setting and significance of this designated heritage asset. Given the limited number of new dwellings, the distance from the scheduled area and the existing natural screening on the eastern side of the appeal site, I consider that, in principle, the proposal need not adversely impact on the setting of, or key views to and from, the scheduled ancient monument and, therefore, it would not harm the significance of this designated heritage asset. As such, and noting that this is an outline proposal with only access details applied for, in this respect, the development is capable of not conflicting with the provisions within the Framework which seek to protect the significance of designated heritage assets. However, this lack of harm weighs neutrally in the planning balance and does not amount to a consideration in support of the appeal.
27. I also acknowledge the comments made by the Heritage Officer of North Yorkshire County Council which declare that, due to the appeal site's proximity to the scheduled area referred to above and as it is stated to be an area where no previous development is known, there is the potential for archaeological remains associated with medieval and later back plot activities to survive within the proposed development area. Had I been minded to allow the appeal, conditions could have been imposed that would have required a scheme of archaeological mitigation recording to be undertaken in response to the ground disturbing works associated with the proposed development. However, as I am dismissing the appeal, I have not considered this matter any further.
28. The appellant has drawn my attention to two letters of support for the proposed development which are contended to support the assertion that existing elderly owners of larger properties within the village would be keen to downsize to a bungalow and still remain within the village. It is declared that this would, in turn, free up larger properties suitable for growing families who would support the village school and other services. Given that it is the intention to provide a mix of two and three bedroomed bungalows, the proposed development would be capable of providing the opportunity for this to

occur. However, there is no substantive evidence before me which confirms that this would actually be the case. This is, therefore, a matter to which I can only afford limited weight to in the overall planning balance, and it does not alter or outweigh my conclusions on the main issue.

29. The appellant has drawn my attention to the bungalows at 'The Close' which he contends is an example of development behind an existing frontage within the village, and one of the letters of support states that the proposed development would be far more in keeping with the village than these properties. I viewed 'The Close' when on site and noted that it is on the northern side of the Green where the linear nature of development is not as defined as that along the southern side of Lumley Lane. In this respect, I consider that it is not directly comparable to the appeal before me. Furthermore, I am not aware of the detailed circumstances of this development and, in any event, I have determined the appeal before me on its own planning merits with regard to the specific location and context of the appeal site and found that it would cause harm.
30. I note that, subject to the appropriate conditions, the Council's Highways Officer, Yorkshire Water and MOD Safeguarding RAF Leeming raised no technical objections to the proposed development. In addition, I am aware that the Council consider that it would not have a significant impact on the amenity of nearby residents and, given that scale and layout are matters reserved for future consideration, I am satisfied that an appropriate scheme could be evolved which would not have an unacceptably harmful effect on the living conditions of the occupiers of neighbouring properties. However, these are neutral considerations in the planning balance and do not outweigh the harm that I have found.
31. None of the other matters raised alter or outweigh my overall conclusions on the main issue.

### **Conclusion**

32. Part of the proposed development would not preserve or enhance the character or appearance of the KFCA and part of it would have a harmful effect on the setting of the KFCA. This is a matter which must attract considerable importance and weight against it. In relation to the Framework, the proposed development would cause 'less than substantial harm' to the significance of this designated heritage asset. I must attach considerable importance and weight to that harm, which I find would not be outweighed by the moderate public benefits of the proposed development. Furthermore, I have found that it would significantly harm the character and appearance of the area.
33. For the reasons given above, I conclude that the appeal should be dismissed.

*F Cullen*

INSPECTOR