The Planning Inspectorate

Appeal Decision

Site visit made on 27 November 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/E2734/W/19/3234001
Low Keld, Main Street, Kirby Malzeard, Ripon HG4 3SG

- 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 Mrs Nichola Fillingham against the decision of Harrogate Borough Council.
- The application Ref 19/01095/COU, dated 17 March 2019, was refused by notice dated 24 May 2019.
- The development proposed is: This application relates to planning permission 15/05350/FUL and the plan attached in supporting documents. The land edged in red formed part of the planning application for which we gained full planning permission to build a dwelling. The dwelling was completed in 2018. The land directly behind the dwelling (edged in blue) is also our land but is classified as agricultural. We would like to apply for the change of use to this section of land from agricultural to garden. Most of our neighbours' gardens running along this part of the Main Street, run all the way back to the rear boundary fence. We would simply like to incorporate this small section of agricultural land running directly behind our house into our garden so the whole plot (area edged in red and blue) is classified as garden use.

Decision

1. The appeal is allowed and planning permission is granted for change of use of land from agricultural to domestic curtilage adjacent to Low Keld, Main Street, Kirby Malzeard, Ripon HG4 3SG in accordance with the terms of the application, Ref 19/01095/COU, dated 17 March 2019, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plan: 1:1250 scale site plan – 27 March 2019.

   3) Notwithstanding the provisions of Class E, Part 1 of Schedule 2 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 buildings, enclosure, swimming pool or container for domestic heating incidental to the enjoyment of the dwellinghouse shall be erected within the site.

Procedural Matter

2. The application form included a broad statement of what is proposed. For completeness I have included the statement in full in the banner. The description used in the application form refers to the site edged in blue. The

appellant's site plan shows the site edged in red and I have determined the appeal on that basis. In the interests of clarity, I have used the Council's description of the proposed development in my decision.

Main Issues

3. The Framework states that great weight should be given to conserving and enhancing the landscape and scenic beauty of Areas of Outstanding Natural Beauty (AONBS) which are protected under the Countryside and Rights of Way Act 2000.

4. In light of the above, these are the effect of the proposal on:

   - the character and appearance of the area, with particular regard to the setting of Kirby Malzeard and the Nidderdale AONB;
   - the living conditions of the occupiers of the neighbouring dwelling, Montreaux.

Reasons

The character and appearance of the area

5. Low Keld (the property) is located on the edge of Kirby Malzeard and forms the last house at the south west end of the village. The proposal is to incorporate an area of agricultural land as additional garden.

6. The rear boundary of the land would align with the rear boundary of the neighbouring property, Montreaux, and to the side would match the existing boundary of the property. There is an existing hedgerow across part of the rear boundary, and a post and rail fence along the remainder. To the side boundary, there is a post and wire fence.

7. The extended garden area would be visible when approaching the village from the south. However, it is viewed against the backdrop of other domestic curtilage and would not be perceived as a significant encroachment into the surrounding countryside. When viewed from areas to the west the site is not prominent due to the topography, since the land to the west rises steeply. As a result, the effect on character and appearance of the area, the setting of the village, and the AONB would be very limited.

8. The Kirkby Malzeard Village Design Statement[1] (the DS) provides detailed guidance on the form of new development within the village and seeks to ensure that development takes place within village boundaries. However, the whole of the appeal property, including the dwelling, lies outside the boundary identified in the DS, therefore I do not regard the village boundary as being up to date in the context of the appeal proposal.

9. The appellant has provided me with a plan from the emerging Harrogate District Local Plan 2018 which shows the appellant's property and the appeal site within the draft development limit. The emerging plan is yet to be adopted, however it has reached the main modifications stage. I therefore afford it moderate weight in my decision.

[1] Ratified by Harrogate Council June 2002

10. In view of these points I am satisfied that the proposal does not conflict with the intentions of the DS to contain development within the village boundary, given the current context.

11. The Council refers in its first reason for refusal to Saved Policy HD20 of the Harrogate District Local Plan[2] (the Local Plan). In respect of landscape setting the policy relates solely to the design of new buildings and is not relevant to the proposal which is for change of use.

12. The Council has a landscape character assessment (LCA) for Kirby Malzeard and Grewelthorpe[3]. The landscape assessment supplements Policy C2 of the local plan. The guidance identifies that the settings of villages are sensitive to change and can be affected by curtilage extensions, and seeks to control such extensions where this would be detrimental to setting. For the reasons given, I do not find that the proposal would conflict with the guidance in the LCA.

13. The Framework places great weight on the conservation and enhancement of scenic beauty within AONBs. Due to its location in relation to existing properties, boundaries and the local landform the proposal would have very little, if any, effect on the character of the landscape or the scenic beauty of the AONB. Therefore, I do not consider that the proposal would be in conflict the aims of the Framework.

14. I therefore conclude on this main issue that the proposal would not harm the character and appearance of the area, with particular regard to the setting of the village and the AONB, and would comply with Policies SG3 and SG4 of the Harrogate District Local Development Framework Core Strategy[4] (the Core Strategy) and Saved Policies C1, C2, and C18 and of the Local Plan which amongst other things require that development in the AONB should not have an adverse effect on the landscape or its character, the appearance of the countryside or the setting of a settlement, or the aims of the Framework. Whilst it would conflict with the existing guidance in the guidance in the DS in that it would be outside the existing development limit, that is outweighed by the other factors I have described.

Living Conditions

15. On my site I observed the relationship between the garden area of the neighbouring property and the proposal. There is a post and rail fence between the garden of Montreaux, and it would be possible to look into that area from the proposed extended garden. The neighbour has confirmed that they have no objection to the extent of mutual overlooking, which would be no different from the situation which exists between many residential properties.

16. I therefore conclude that there would be no harm to the living conditions of the neighbour. The proposal would therefore comply with Saved Policy HD20 of the Local Plan which amongst other things requires that new development should respect the living conditions of residents, and the Framework, which has similar aims.

[2] As altered 2004
[3] Area 35 Approved Feb 2004.
[4] Adopted 2009

Conditions

17. For certainty I attach planning conditions limiting the period of the consent to 3 years and requiring the development to be carried out in accordance with the approved plan.

18. The Council has suggested that permitted development rights should be removed in relation Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This would require the householder to obtain permission for buildings or enclosures, including swimming pools, or a container for domestic heating.

19. The Planning Practice Guidance is clear that conditions which restrict the use of permitted development rights may not pass the test of reasonableness or necessity and if they are applied should be clear exactly which rights have been removed. Given the location of the site at the entrance to the village, the structures listed in the condition could, unless subject to control, have an impact on the setting of the village and AONB. I therefore consider that it is necessary and reasonable to attach a condition which would enable the planning authority to control the siting of sheds, garages and other incidental structure within the area edge red on the site plan. The appellant has raised no objection to the attachment of such a condition in her final comments.

20. The Council has suggested a condition relating to the materials to be used in the external surfaces of the development. Given that the proposal is for change of use I consider the condition to be unnecessary.

Conclusion

21. For the above reasons the appeal is allowed.

Tim Wheeler

INSPECTOR