



Appeal Decision

Site visit made on 18 February 2020

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2020

Appeal Ref: APP/E2734/W/19/3237151

Land off Bar Lane, Knaresborough HG5 0QG

- 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 outline planning permission.
 - The appeal is made by Gladman Developments Ltd against Harrogate Borough Council.
 - The application Ref 18/03499/OUTMAJ, is dated 23 August 2018.
 - The development proposed is the erection of up to 175 dwellings with public open space, landscaping and sustainable drainage system and vehicular access point from Bar Lane.
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Decision

1. The appeal is dismissed and planning permission for the erection of up to 175 dwellings with public open space, landscaping and sustainable drainage system and vehicular access point from Bar Lane is refused.

Procedural Matter

2. This appeal is against the non-determination of an outline planning application for up to 175 dwellings with all matters, except for access, reserved. The Council resolved that it would have refused the planning application and provided 4 putative reasons for refusal. Indicative plans have been provided detailing the layout and landscaping. I have had regard to these so far as relevant to the appeal.

Main Issues

3. Following the submission of the Council's statement of case, one of the putative reasons for refusal has been removed in relation to the effect upon the air quality of the Hay-a-Park Site of Special Scientific Interest (SSSI). Therefore, based on the submitted policies, my site visit and the representations from the appellants, Council, consultees and interested parties; the main issues are:
 - (a) Whether the proposal would accord with the Council's plan led strategy for housing and growth; and,
 - (b) The effect of the proposal on the landscape character and appearance of the area.

Reasons

Plan led strategy

4. The 12.22 hectare site is located on the north side of Knaresborough between Bar Lane and Hazelheads Lane. It comprises grass fields, currently used for

horse grazing. It is located outside the settlement boundary of Knaresborough, and thus is in the countryside in policy terms. The proposed residential development of up to 175 dwellings, 40% of which would be affordable housing, would take vehicular access from Bar Lane. The indicative plans detail the provision of around 6.66 hectares of public open space, sustainable drainage systems, children's play area and recreational trails.

5. Policies SG1 and SG2 of the Harrogate Core Strategy (February 2009) (CS) set out settlement growth policies; including the hierarchy of housing distribution and development limits. These development limits are drawn around settlements to allow the sustainable growth and development of those settlements within the District that have the best access to jobs, shops and services. Policy SG3 details that outside of the development limits, land is classified as countryside, and imposes strict control over new development with some exceptions.
6. The proposal would be in the countryside, outside the development limits set by Policies SG1 and SG2, and it would not fall within any exception categories detailed in Policy SG3. Therefore, the location of the development would be inconsistent with Policies SG1, SG2 and SG3 of the CS.
7. The emerging Harrogate Local Plan (eLP) is at a very advanced stage of the Examination Process with the Examining Inspector's Report (IR) published, finding the plan sound with the main modifications. This indicates that the policies are consistent with the National Planning Policy Framework (the Framework) and there are no unresolved objections. It is due to be adopted by the Council imminently as part of the development plan. I see very little reason why it would not be, and thus having regard to the Paragraph 48 of the Framework, it is appropriate to give the eLP extremely substantial weight.
8. Policy GS1 of the eLP sets out the number of new homes to be provided over the eLP period. Policy GS2 of the eLP seeks to focus growth within the district's main settlements, settlements on the key public transport corridors and in a new settlement within the Green Hammerton/Cattal area. Policy GS3 of the eLP details that development limits have been drawn around those settlements listed in Policy GS2. Outside development limits proposals for new development will only be supported where expressly permitted by other policies of the eLP, a neighbourhood plan or national policy.
9. Policy GS3 of the eLP also details that in the absence of a 5 year supply of housing land, proposals for new housing development on sites outside the development limit of a settlement will be supported and considered in accordance with the presumption in favour of sustainable development set out in national planning policy.
10. The site is located outside the development limits in the eLP and is not identified as a housing allocation by Policy DM1 of the eLP. Whilst the Council assert conflict with Policy DM1 of the eLP, the policy does not exclude other sites from development. Nonetheless, the site was rejected by the Council during the eLP process as a housing allocation. I have been presented with no other policies that would permit this proposal outside the development limits. Furthermore, the Council can demonstrate a 5 year supply of housing land, which is undisputed by the appellants.

11. Moreover, the IR details a housing supply figure of 16,626 against a housing requirement figure of 13,377, with the Examining Inspector finding this to be a very generous 25% over-allocation against the plan's housing requirement. At paragraph 181 of the IR, he states "*there is no need to identify additional allocations or reserve sites, as the overallocation against the requirement provides, in my judgement, plenty of flexibility*".
12. Consequently, as the proposal would be located in the countryside, outside the development limits, it would fail to accord with the plan led strategy for housing and growth of the CS, contrary to Policies SG1, SG2 and SG3. It would also fail to accord with the plan led strategy for housing and growth in the eLP, being contrary to Policies GS1, GS2 and GS3. There would be an 'in principle' policy harm resulting from the location of this development. The proposal would not be genuinely plan-led and this matter attracts substantial weight against the proposal.

Character and appearance

13. The site is bordered by 2 narrow rural roads, Bar Lane and Hazelhead Lane. It comprises 2 pleasant pasture fields split by a hedgerow that runs north south. There are water bodies in each field, and it has a very subtle domed landform, rising gently from the perimeter of the site to a high point roughly in the centre of the eastern field. Hedgerows and well established trees form the boundaries and an overhead electricity line crosses the site. Despite the site being adjacent to a new housing development to the west, the northern, eastern and southern areas are rural, with uses such as a plant nurseries and stables accessed off Bar Lane and open countryside to the south. The Hay-a-Park SSSI lies to the south west, which is an open water body formed from gravel pit restoration.
14. In terms of landscape character, the site sits within the Southern Magnesian Limestone National Character Areas (NCA), the Magnesian Limestone Ridge Regional Landscape Character Type (LCT) and the Knaresborough Reclaimed Gravel Pits District Landscape Character Area (LCA).
15. The site has an essentially rural character, typical of the NCA, and it also contains mature hedgerows and pockets of deciduous woodland typical of the LCT. At a district level, the appellants' Landscape and Visual Impact Assessment¹ (LVIA) states that the Harrogate District Landscape Character Assessment (February 2004) sets out that the area is important to the setting of Knaresborough and as a link to the countryside. The LVIA considers the site to be of medium landscape quality, sensitivity and value. I agree.
16. The recent housing development to the west has affected the rural character of the area. However this sits alongside existing development and appears to round off the existing settlement. In contrast, the shape and location of this site juts out into the countryside at an oblique angle to the rest of the development in the area and would be surrounded on 3 sides by rural uses, open fields and waterbodies. To my mind, the location of development would be an awkward juxtaposition, at odds with the landscape character of the area and the countryside's intrinsic character and beauty. In terms of landscape/townscape effect, the LVIA identified an adverse effect from the development in most categories, even at year 15 with this being moderate or

¹ Prepared by CSA Environmental. Report No: CSA/3708/01. Dated July 2018.

- slight. The only slight benefits are to trees, hedgerows and waterbodies, which would be retained through the proposal with new planting proposed.
17. Owing to the landform and heavily treed boundaries, the site is visually well contained, save for the access points. Even at the time of my visit, views into the site are filtered, and this would be greater during summer months. However, this would not serve to contain the development to such an extent that there was no visual effect. The visual effect of the development would be localised, but it would still introduce a significant, permanent and irreversible urbanising development into the open countryside.
 18. Furthermore, even if housing were set into the site leaving landscaping strips to the edges, there would still be filtered views through particularly at access points. Additionally, upper floors would be visible from wider afield given the landform. The LVIA's assessment of visual effects identified that for each view bar 2 assessed, there would be an adverse effect of some form. The other 2 views would have a neutral effect as the development would not be visible.
 19. Therefore, despite the site being relatively well contained by landscaping, and of medium landscape quality, value and sensitivity; the overall effect of the proposal would be harmful to the character and appearance of the area. It would not protect, enhance or reinforce the characteristics, qualities and features that contribute to the local distinctiveness of the district's rural environment.
 20. This would be contrary to Policy C2 of the Harrogate District Local Plan (February 2001) (LP) which seeks to protect existing landscape character. It would also be contrary to Policies SG3, SG4 and EQ2 of the CS, which seeks to protect the loss of greenfield land, strictly controlling new development in the countryside, giving an appropriate level of protection to the District's natural and built environment commensurate with its international, national and local importance.
 21. There would also be conflict with the eLP Policies HP3 and NE4. HP3 aims for development to incorporate high quality building, urban and landscape design that protects, enhances or reinforces those characteristics, qualities and features that contribute to the local distinctiveness of the district's rural and urban environments. NE4 seeks to protect, enhance or restore the landscape character of Harrogate district for its own intrinsic beauty and for its benefit to the economic, environmental and social well-being of the district will be supported. Lastly, there would be conflict with the Framework which recognises the intrinsic character and beauty of the countryside and seeks to ensure decisions contribute to and enhance the natural environment.

Other Matters

Agricultural Land

22. The proposal would result in the loss of around 12.2 hectares of agricultural land. There is no agricultural land classification survey, so the actual economic effects of the loss of land are unknown. Policy NE8 of the eLP seeks to protect the best and most versatile agricultural land (grades 1, 2 and 3a) (BMVAL) from development not associated with agriculture or forestry except where it can be demonstrated to be necessary.

23. The site is agricultural land. However, I do not know if it is BMVAL as I have very little substantive evidence from the main parties on the matter. The appellants claim that as it is a reclaimed gravel pit which has been subject to remediation, backfilling and reclassification, it is not BMVAL. I have very little evidence from the Council to counter this and based on the details presented in the Phase I Geo-Environmental Report², I am inclined to agree with the appellants.
24. Therefore, despite the absence of an agricultural land classification survey, given its previous land use history, applying common sense leads me to doubt that the site is BMVAL. However, nothing turns upon this matter given my findings on the main issues relating to the plan led strategy.

Little Pastures Trekking Centre

25. The proposal would result in the loss of grazing land for the adjacent Little Pastures Trekking Centre (LPTC). This is leased to them by the owners of the site, although it appears that notice may have been given on this tenancy agreement. The appellants set out that loss of the site would arise as a consequence of the termination of the tenancy agreement, not because of the grant of planning permission; and that this termination has been triggered to take place in July 2019. However, the site appeared to be in use for horse grazing during my visit.
26. Whilst the stables are off site, the operators of LPTC detail that the loss of this grazing land would affect the amount of grazing land available for horses and remove the option to produce haylage for winter feed. I understand this could result in the business being put under financial hardship and perhaps reduced in size. The harm would not be so serious as to warrant a refusal of permission on its own but adds a little weight against the proposal.
27. Furthermore, LPTC is used by disabled people who share a protected characteristic under the Equality Act 2010. Where there is potential for a decision to affect a person/s with a protected characteristic, due regard must be had to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. Despite the appellants' views, a potential consequence of granting permission for the proposed development could be that disabled users of the site may not be able to visit as frequently, or perhaps, even at all.
28. The Council considered the proposal would not give rise to an unacceptably adverse impact on people who share a relevant protected characteristic. However, it is my judgment that, if a grant of permission for the development could put a business at risk which supports people with disabilities, then it could fail to advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and persons who do not share it. From my findings on the main issues and in the planning balance below, it is not necessary for me to consider whether these effects are proportionate and/or capable of mitigation; yet the PSED adds weight against the proposal.

Planning Obligation

29. A signed planning obligation dated 20 January 2020 has been submitted. It would secure the provision of affordable housing, public open space and

² Prepared by Enzygo Limited. Report Ref SHF.1132.147.GE.R.001. July 2018.

sustainable drainage. It would also provide for monetary contributions towards air quality mitigation, open space, education, bus stop infrastructure, traffic regulation orders and a travel plan. These obligations would be necessary to make the development acceptable, complying with the Framework and Community Infrastructure Levy Regulations 2010 (as amended). However, as I am dismissing the appeal for other substantive reasons, it has not been necessary to examine the obligation in any further detail.

Other considerations

30. In January 2019, the planning application was resolved to be approved by Members of the Planning Committee subject to the planning obligation being secured. There seems to have been an intervening period of around 8 months where very little happened despite repeated attempts from the appellants, at which point the appeal was submitted as a failure case in September 2019. Shortly after this, the application was reported back to Planning Committee with a recommendation to refuse owing to a change in circumstances. These being the stage of the eLP and a change to the supply of housing.
31. Understandably, this matter would have been frustrating for the appellants and it is regrettable that the Council could not have been more proactive during those 8 months following a resolution to approve. However, I must determine this appeal on the relevant material planning considerations at this current time. Given there has been substantial progress in the eLP process, and the IR published, matters have considerably changed since the planning application was originally submitted to the Council.
32. The changes from the officer's reports in January 2019 and September 2019 on the matter of character and appearance are noted. However, I have assessed the effect of this proposal on the evidence before me and from observations on the visit.
33. The Council presented a recent Appeal Decision³ for a residential development of up to 210 dwellings in the same local authority area. The appeal was dismissed, and planning permission refused. I sought comments from the appellants on this matter and have had regard to them. The landscape characteristics and physical circumstances are not comparable.
34. However, although the site is outside Wetherby (a settlement in the local authority area of Leeds City) and not listed as a settlement in Policy SG2, it is nevertheless an edge of settlement proposal similar to this appeal. Whilst planning benefits and harms to be weighed in the planning balance are unique to each site, my findings on the presumption in favour of sustainable development and the plan led system are similar to the other Inspector, and the approach taken by us both on those matters is consistent and compliant with the Framework.

Planning Balance

35. The Council accept that, in so far as they relate to housing development, CS Policies SG1, SG2 and SG3 are out of date. This is because they refer to an out of date housing requirement. Therefore, Paragraph 11 (d) of the National Planning Policy Framework (the Framework), of the 'tilted balance' is engaged. However, the presumption in favour of sustainable development does not

³ APP/E2734/W/19/3236153

- change the statutory status of the development plan as the starting point for decision making.
36. In favour of the proposal, there would be eLP policy compliant 40% affordable housing. The eLP makes appropriate provision to meet affordable housing need in the area. However, any additional affordable homes would be a benefit, and for this reason I give significant weight to the provision of affordable homes.
37. There would be benefit from the provision of a market homes, delivered within the next 5 years. However, this is tempered by the existence of a 5 year supply of housing and the IR's finding that there would be a very generous 25% over-allocation against the eLP's housing requirement. Together, these would significantly boost the supply of homes and the additional market homes that would be provided by this proposal would attract moderate weight in this instance.
38. Construction works would create employment opportunities and the provision of housing would increase local spending, council tax payments and new homes bonus, all of which would contribute towards the local economy. The proposal would provide a considerable amount of public open space creating recreational opportunities and biodiversity benefits. Taken together, the would be of moderate weight.
39. On the other hand, there would be harm arising from the development upon the character and appearance of the area. This conflicts with the Framework, development plan and the eLP. I give this matter considerable weight. The potential negative effects of the proposal the LPTC and, with regard to the PSED, those users of it who have disabilities also weighs against the proposal.
40. Notably, however, is the conflict with the plan led strategy for housing and growth in the CS and eLP. Whilst the CS on this matter is considered out of date, the proposal would be inconsistent with it and the eLP, which is at a very advanced stage. The site sits outside the development limits in both the adopted and emerging development plans and granting planning permission for this proposal would fundamentally be at odds with paragraph 15 of the Framework, in that the planning system should be genuinely plan-led.
41. Consequently, even with the 'tilted balance' engaged; it is my judgement that the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

42. For the reasons set out above, I conclude that the appeal should be dismissed, and planning permission for the erection of up to 175 dwellings with public open space, landscaping and sustainable drainage system and vehicular access point from Bar Lane be refused.

Katie McDonald

INSPECTOR