



Appeal Decision

Site visit made on 26 November 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th April 2020

Appeal Ref: APP/E2734/W/19/3236528

West House Farm, Nidd Lane, Birstwith HG3 3AW

- 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 Mr David Holmes against Harrogate Borough Council.
 - The application Ref: 19/02856/OUT, is dated 4 July 2019.
 - The development proposed is described as "Outline application for the erection of up to 3 dwellings with access considered".
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Decision

1. The appeal is dismissed, and planning permission for the erection of up to 3 dwellings, with access considered, is refused.

Procedural matters

2. The development proposal was submitted in outline with all matters reserved for future approval except for access. In addition to the location plan which indicates the position of the proposed access to the appeal site, the application included a plan that shows improvements to Nidd Lane to accommodate the development. I have had regard to this drawing as it relates to the site access.
3. Since the appeal was lodged, the Harrogate District Local Plan (the HDLP), which was in draft at the time the application was submitted, has been adopted¹. The Council's putative reason for refusal refers to Policies HP3 and NE4 of the, as it was then, draft HDLP in addition to Policies SG4 and EQ2 of the Harrogate Core Strategy 2009, and Saved Policies HD20, C1 and C2 of the Harrogate District Local Plan 2001. As a result of the adoption of the HDLP, these latter policies have been replaced by HDLP Policies HP3 and NE4.
4. Comments were sought from the parties in respect of the implications of the adoption of the HDLP on the arguments that each had put forward. I have taken these comments into account in reaching my decision.

Main Issue

5. The appeal has been made against the failure of the Council to give notice of its decision within the prescribed time period. The Council has provided with its appeal submissions a copy of an undated officer's report which sets out that, had the Council been in a position to determine the planning application,

¹ Adopted 4 March 2020.

planning permission would have been refused on the grounds that the proposed development would cause significant harm to the setting of the village, and to the landscape character and visual amenity of the area through the extension of the built form into the open countryside and as a result of additional highways works.

6. The main issue in this appeal is, therefore, the effect of the proposed development on the character and appearance of the area.

Reasons

7. The appeal site forms part of a larger field that has been subdivided by a timber fence. The landform rises to the north through a patchwork of fields with hedgerow boundaries and some groups of trees. To the south the land drops away to the valley of the River Nidd. West of the appeal site, Nidd Lane leads to a scattering of buildings, set amongst fields and woodland, some distance from the village.
8. The site lies to the north of Nidd Lane, a road which gradually narrows from its junction with the main road, Clint Bank, to effectively a single track road by the point that it runs alongside the appeal site. Nidd Lane has no footways, apart from a short length at the junction with the main road and has grass verges of varying widths to both sides. With only a small number of lighting columns and a few poles carrying overhead cables, it has a very rural, rather than urban, character particularly as it progresses to the west and no longer has houses to each side.
9. The settlement of Birstwith has two distinct areas. The older part lies to the south of the river consisting of small groups of buildings clustered around the junction of four roads and a small group adjacent to a large industrial building. North of the river, the development is predominantly Twentieth Century housing arranged around culs-de-sac leading from either Clint Bank or Nidd Lane.
10. The majority of the existing built form of the village lies to the south of Clint Bank and Nidd Lane. Whilst there is some development to the north side of Nidd Lane, between the junction with Clint Bank and the access road to West Farm, beyond the access to west farm there is open countryside. Although there is housing opposite the appeal site, this is orientated towards Nidd Rise and presents its rear gardens to Nidd Lane.
11. There is a clear visual termination to the development on the north side of the lane at the access to West Farm. An area of open land lies between this access road and the appeal site. Development of the appeal site would introduce new buildings that would not relate visually to either the existing development to the south, or to the development further east on Nidd Lane. It would appear as a detached encroachment into the surrounding countryside, introducing urbanising features such as the access, driveways and residential curtilages, in addition to the proposed buildings, into an area which is bounded on three sides by countryside. This visual encroachment would be exacerbated by the rising landform and the removal of part of the hedgerow boundary to create the access to the site. This would be harmful to the character of the landscape and the appearance of the area and would be harmful to the countryside setting of the village at this point.

12. I have been provided with a copy of a Landscape and Visual Impact Appraisal (LVIA). This appears to be based on a previous scheme for five dwellings on the site, however, I consider that its findings are equally applicable to the current proposal for three dwellings. The LVIA concludes that the scheme would have minor to moderate adverse effects on the landscape and a moderate adverse visual effect in close range views, falling to a minor to negligible adverse effect in longer range views. The LVIA confirms my conclusions in this respect.
13. As well as proposing three new dwellings, the appeal scheme also proposes highways improvements to Nidd Lane. This would include localised widening of parts of the carriageway in the vicinity of the appeal site and the construction of a surfaced footway on the south side of Nidd Lane, running from the appeal site to the junction with Clint Bank. The proposed site access and new footway with dropped kerbs at the access points to existing houses would lead to the introduction of new, engineered features along a substantial length of Nidd Lane that would materially alter its visual appearance and character, giving it a significantly more urban appearance. This would compound the urbanising effect of the development of the appeal site for housing and add to the harm to the character and appearance of the area. As such it would conflict with the relevant requirements of HDLP Policy NE4 which expects new development to protect and/or enhance the character, appearance and local distinctiveness of the landscape and seeks to resist development which would harm or be detrimental to the character of the local and wider landscape, or the setting of a settlement.
14. Policy HP3 of the HDLP expects new development to respond to the local distinctiveness of an area. Some of the criteria of this policy refer to the detailed design elements of a proposal. As the appeal proposal was submitted in outline with matters of scale, layout, appearance and landscaping reserved for future approval, I am satisfied that were the proposal acceptable in other respects that appropriate details could be submitted to meet these requirements. Nevertheless, Policy HP3 also requires development to respect the spatial qualities of the local area and respond positively to the context of the site. Based on my site visit and the evidence before me, I have found that this would not be the case and, consequently, the proposal would not comply with Policy HP3 when taken as a whole.
15. It is not in dispute that the appeal site lies beyond but adjacent to the development limit for Birstwith and that it is not currently allocated for development. HDLP Policy GS3 sets out that proposals for new development beyond the development limits will only be supported where expressly permitted by other policies in plan. I have not been made aware of any other policies in the HDLP that would be relevant in this respect. It is also common ground that the Council can demonstrate a deliverable housing land supply in excess of five years.
16. The appellant suggests that housing on windfall sites will be required to meet the Councils housing targets, and I note that the HDLP includes an allowance for housing from windfall sites in years 7 to 20 of the plan period. The plan period runs from 2014 to 2035, and the plan has yet to reach year 7 of its period. Whilst the HDLP acknowledges a shortfall in housing delivery up to March 2018 and the requirement for a five year housing supply is a minimum

rather than a maximum, the latest Housing Delivery Test results² show that the Council is currently exceeding its housing targets. There is no substantive evidence that would indicate that the appeal site is needed at this time to make up housing numbers.

17. My attention has been drawn to a previously allowed appeal for two houses³ which was refused planning permission on the grounds of the effect of the proposal on the Nidderdale Area of Outstanding Natural Beauty (AONB). I note that the Inspector in that case concluded that whilst there would be no harm to the AONB, as the appeal site lay beyond its boundary, the proposal would result in localised harm to landscape in this location. I saw during my site visit that this site was located to the south of Nidd Lane, adjacent to existing built development and, consequently, it is better related to the village than the present appeal site. The present appeal site is located to the north of the lane. As noted above, whilst there is a small amount to the north of Nidd Lane from its junction with Clint Bank, there is an area of undeveloped land between this and the appeal site which forms a clear and distinct visual break between the existing built form and the appeal site. At the time that this earlier appeal was allowed, the Policies in the then development plan were held to be out of date which triggered the presumption in favour of sustainable development set out in the National Planning Policy Framework. The Inspector found that the benefits of the scheme particularly in terms of housing supply were not outweighed by the harm he identified. It is no longer the case that some relevant policies are out of date, as a new local plan has been adopted that has replaced the previous ones. Even if that were not the case, the circumstances of that proposal are not directly analogous to the case before me now. I can give little weight to this decision.
18. The Appellant has also brought to my attention a planning permission granted by the Council in October 2019 for a single dwelling, adjacent to, but outwith, the development limit of a different settlement within the Nidderdale AONB⁴. It is contended that this sets a precedent for the appeal proposal. I do not have the full details of that proposal before me. In particular, the officer's report recommends that the application be refused planning permission and I do not have any information regarding the circumstances that led to the Council's Planning Committee not accepting that recommendation and subsequently granting planning permission.
19. This notwithstanding, I note from the copy of the decision notice that I have been provided with, that planning permission was granted for the dwelling subject to a condition restricting the occupancy of the approved dwelling to a person solely or mainly employed or last employed in the locality in agriculture, or in forestry and their resident dependants. Where there is an essential need for a rural worker to reside at or near their place of work in the countryside, this is potentially a material consideration that would indicate planning permission could be granted for a proposal that otherwise conflicted with the development plan. The current appeal proposal is neither described as rural workers dwellings, nor does the appellant's evidence suggest that the proposed dwellings are required to meet an essential need for rural workers to live at or near their place of work. In this respect, the proposal before me is materially

² Published in February 2020

³ Appeal Reference: APP/E2734/W/19/3219604

⁴ Planning Permission Reference: 19/03477/OUT

different from the planning permission that the appellant refers to and consequently, I can give no weight to this in favour of the appeal proposal.

20. I also note that there have been two previous appeals relating to the development of five houses on the same site as the current appeal, both of which were dismissed⁵. In both cases, the Inspector found that development of the appeal site for housing would cause harm to the character and appearance of the area. Whilst these appeals were determined under different planning policies, the expectations of policies SG4 and EQ2 of the Harrogate Core Strategy 2009 and Saved Policies HD20 and C2 of the Harrogate District Local Plan 2001 were essentially similar to the relevant requirements of Policies HP3 and NE4 of the HDLP.
21. I accept that the present scheme is for three houses rather than the five previously proposed. Nevertheless, in this location, the combination of the rising landform, the visual separation from existing development on the north side of Nidd Lane, and the lack of a strong relationship with the existing development to the south of Nidd Lane, would mean that three dwellings on this site would appear equally as intrusive and unrelated to the existing form of the village as five dwellings.
22. The proposed development would cause significant harm to the setting of the village and to the landscape character and visual amenity of the area by extending the built form of the village into open countryside at a location where there is a distinct break between the built form to the south of Nidd Lane and the open countryside to the north. The proposed highway improvements to Nidd Lane would further erode the visual appearance and rural character of the area. I therefore conclude that the proposed development would cause harm to the character and appearance of the area. It would be contrary to Policies GS3, NE4 and HP3 of the HDLP.

Other matters

23. Whilst not raised by either of the main parties, I note from the copy of the decision on Appeal Reference APP/E2734/W/19/2322624 provided by the Council, that West House Farm which lies to the north west of the appeal site is a Grade II Listed Building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
24. No information regarding the listed building or its significance has been provided by the parties. However, from what I saw when I visited the site, I would agree with the findings of the previous Inspector that due to the presence of fields and trees between the appeal site and West Farm, and the degree of separation, the proposed development would not affect the setting of the listed building.
25. I note that that there is no objection from the Highway Authority in terms of the proposed access to the site and the construction of the footway. However, whilst the technical/engineering aspects of these works may be acceptable, this

⁵ Appeal References: APP/E2734/W/15/3130590 and APP/E2734/W/19/3232624

does not override the visual effect that the new access and footway would have on the area.

Conclusion

26. I have found that the proposed development would cause harm to the character and appearance of the area and would not comply with relevant policies in an up to date development plan. This weighs heavily against the proposal. There are some benefits associated with the proposal in terms of highways improvements. However, there is no compelling evidence that the existing arrangements are inherently unsafe, and so only limited weight can be given to these, which would not overcome the harm to the character and appearance of the area that they would cause. The National Planning Policy Framework seeks to significantly increase the supply of housing. Nonetheless, this is not an objective to be pursued at any cost. The Council can demonstrate a housing land supply in excess of five years and although the proposal would add three new units to the housing stock, this is a modest number and there is no evidence that the Council needs to rely on housing on windfall sites at this time to achieve its housing targets. Consequently, these benefits do not amount to material considerations that would overcome the harm that would be caused to the character and appearance of the area. No other material considerations have been identified that would indicate that planning permission should be granted for a development that does not comply with the requirements of relevant policies in the development plan.
27. For the above reasons, I conclude that the appeal should be dismissed, and that planning permission should be refused.

John Dowsett

INSPECTOR