
Appeal Decision

Site visit made on 23 September 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th October 2020

Appeal Ref: APP/E2734/W/20/3255025

Land at Richmond Hill, Markington HG3 3PQ

- 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 Simon Everingham against the decision of Harrogate Borough Council.
 - The application Ref 19/04853/OUT, dated 20 November 2019, was refused by notice dated 13 January 2020.
 - The development proposed is described as outline planning application for residential development including details of access and demolition.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline with matters regarding appearance, landscaping, layout and scale reserved for later determination. The Appellant has submitted a drawing showing the possible layout of the proposed development ('Indicative Site Plan (Including the full access drive) Drawing No. 100 Rev A dated 'Oct 18'), but this is merely indicative. This Decision Letter proceeds from that position.
3. On 4 March 2020 the Council adopted the Harrogate District Local Plan 2014-2035 (HDLP). As a result, the policies cited in the Council's Decision Notice 13 January 2020 drawn from the Local Plan 2001, the Local Plan Selective Alteration 2004 and the Core Strategy 2009 are void and will not be referred to in this Decision Letter.

Main Issues

4. The main issues are:
 - Whether the site of the proposed development is suitably located having particular regard to the Council's policies on 'development limits';
 - The effect of the proposed development upon the character and appearance of the landscape; and
 - Whether the Appellant has provided sufficient information to determine the likelihood of any risk to European Protected Species (EPS).

Reasons

Locational Suitability

5. The appeal site is part of a clutch of former farm buildings located close to the edge of the village of Markington which is in between Ripon and Harrogate in north Yorkshire. The buildings include an office, stables, a storage unit and a residential unit. A large dwelling lies adjacent although this does not form part of the site. Access to the site is along an uphill lane leading off a road known as Thwaites Lane leading into the village.
6. The development proposal comprises the demolition of about 4 buildings and their replacement with residential dwellings and a garage. The indicative plan shows 4 dwellings arranged in 2 pairs sitting on roughly equal sized plots at the end of the access lane.
7. Markington is defined in the HDLP as a lower order 'Service Village'. Development limits are defined for each settlement. Council policy is to source land for new development as far possible from within the limits of identified towns and other settlements including service villages. Development proposals on sites outside of these development limits will generally be inappropriate unless, exceptionally, they are justified by reference to other policies within the HDLP, neighbourhood plans or national planning policy.
8. The appeal site sits on an elevated area of land about 80-100 metres outside of the development limits for Markington. It would be about 0.8km by road from the village centre equating to a walk of around 7 minutes. The village has a wide range of facilities and services including bus links to Ripon, Harrogate and Boroughbridge.
9. However, whilst the site is not that far outside of the village's development limits, much of the walk to the shops and other facilities would be along a grass verge on the edge of a narrow, unlit, unmarked, treelined road. This would be less than satisfactory for the safe passage of pedestrians and thus the facilities would not be readily accessible from the proposed development for those choosing this mode of travel.
10. Furthermore, this sense of detachment from the heart of the village is compounded by the site being located the other side of a dense belt of tall trees which helps to frame the northern edge of the settlement and separate it from Richmond Hill. Thus, notwithstanding that the site is not far from the defined development limit, the appeal site is nevertheless outside of, and disconnected from, the settlement.
11. Buildings currently in, or last used for, agricultural use are not classified as previously developed land (or 'brownfield land') (see Glossary at page 70 of the National Planning Policy Framework (the Framework)). The planning history for the site shows that several applications have been submitted for changes of use. However, very few details have been provided as to which buildings these applications relate to or whether they were approved and implemented.
12. Nevertheless, irrespective of whether some or all of the buildings within the site fall outside of the exclusion referred to above, and so constitute 'brownfield land', by virtue of its location the proposal still fails to accord with the advice set out in Paragraph 118c) of the Framework. This states that substantial

- weight ought to be given to the value of using suitable brownfield land *within* (my emphasis) settlements for homes.
13. Consequently, there is no policy presumption in favour of the proposal simply because it would be built on land that might fall within the definition of previously developed land.
 14. For the general presumption against development beyond settlement limits to be set aside the Appellant would need to demonstrate that the proposal accords with other policies in the HDLP, a relevant Neighbourhood Plan or national policy.
 15. The Council has just adopted the HDLP. Neither party is contending that the new local plan fails to provide a sufficient supply of housing land for the plan period. No other argument based upon the HDLP or national policy has been advanced to support the use of the site for residential development.
 16. Accordingly, since the proposal was promoted for development prior to the adoption of the HDLP and since, in any event, it would not be suitable for development, it cannot be described as a 'windfall site' for the purposes of contributing to the housing land supply.
 17. The Appellant has permitted development rights to use some of the structures for residential purposes. I understand that buildings B1 and B3 (see Figure 1 – Phase 1 Habitat Map) are, or have been, used for residential purposes. Any change of use of building B2 (the large steel structure on the western part of the site) would almost certainly require authorisation for necessary building works including doors and windows. Building B4 (the horse stables) would also require planning permission. Consequently, the fallback position applies to just 2 of the buildings and I therefore accord it little weight.
 18. For the above reasons, the proposed development would not constitute a suitable location for new housing. Thus, it would fail to accord with Policies GS2 and GS3 of the HDLP which seek to ensure that most new development occurs within the limits of identified settlements and so protect the surrounding countryside against the problems of sporadic development.

Character and Appearance

19. The submitted plans show an indicative layout comprising 4 new dwellings and a detached garage to serve the existing farmhouse. No details are provided as to whether the dwellings would be single storey, 2-storey or higher.
20. The site sits in an elevated position. However, the belt of mature, tall trees to the south would prevent any significant views into the site from the neighbouring village. There would be no view of the development from the entrance to the lane off Thwaites Lane. The most significant views of the development proposal would be from further north along Thwaites Lane where it begins to ascend in the direction of a large farm and Ingerthorpe.
21. Currently, from a vantage point near the large farm it is possible to see the top part of the main farmhouse adjacent to the site. However, buildings B1 and B2 are largely hidden. There would be views of the first floor and the roof of any new 2-storey dwellings, but these would be very restricted.

22. For the above reasons the proposed development would not cause harm to the character and the appearance of the area nor would it urbanise the landscape. Consequently, it would accord with Policy NE4 of the HDLP which seeks to protect the character, appearance and the local distinctiveness of the landscape.
23. It would also accord with the Supplementary Planning Landscape Character Assessment No 49: Stainley Beck Corridor 2004 which seeks to protect the course of the Stainley Beck. Finally, it would accord with Paragraph 170 of the Framework and the need to protect and enhance valued landscapes.

European Protected Species

24. A Preliminary Ecological Appraisal (PEA) and a Preliminary Roost Assessment (PRA) were prepared in October 2018 in connection with the development proposal. The PEA stated that a Great Crested Newt had been identified on site during the survey (there is a pond within the confines of the site). The PRA concluded that buildings B1 and B3 had a moderate likelihood of containing bat roosts and that buildings B4 and B5 (the adjacent farmhouse) had a high likelihood of containing bat roosts. Both species are protected under the European Habitats and Species Directive.
25. A more detailed survey was undertaken between April and July 2020 ('Protected Species Report', FuturesEcology, August 2020). This concluded that bats are probably absent from 2 of the buildings (B2 and B3) and that if bats are present in buildings B1, B4 and B5 appropriate mitigation measures can be utilised. As regards Great Crested Newts, the report concluded that the likelihood of presence is very limited due to the amount of hardstanding and that any impacts caused by construction could be mitigated.
26. Great Crested Newts and bats are protected under the Conservation of Habitats & Species Regulations 2010. I consider that a condition for their protection would be necessary in the event of allowing the appeal to ensure that appropriate mitigation measures are deployed. Furthermore, it would be relevant because ecology, biodiversity and the protection of European Protected Species are material planning conditions. It would be relevant to the development due to the location of the buildings and the pond. It would be enforceable because development could not commence until such time as an appropriate license had been secured. Finally, it would be precise as the condition would define the timeframe within which the condition would have to be satisfied.
27. The Appellant has provided sufficient information with regard to European Protected Species to confirm that the issue could be satisfactorily resolved through the imposition of an appropriate planning condition. Therefore, the development proposal would accord with Policy NE3 of the HDLP which requires that proposals that would have an effect on protected species are considered within the context of the appropriate legislative framework. Furthermore, it would accord with the advice set out at Paragraph 175a) of the Framework that no significant harm should be caused to biodiversity.

Planning Balance and Conclusion

28. The proposed development would not adversely harm the character and appearance of the landscape and surrounding area, nor would it create any harm to European Protected Species which could not be resolved through a planning condition. These considerations are of neutral effect. However, it would be located outside of the development limits of Markington without any exceptional justification. I consider that this constitutes a fundamental breach of the Development Plan which outweighs my other findings.

29. For these reasons the appeal should be dismissed.

William Walton

INSPECTOR