
Appeal Decision

Site visit made on 17 November 2020

by J Hunter BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/E2734/W/20/3259384

Land north of Abbey Road, Knaresborough HG5 8HX

- 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 Carter Jonas LLP against the decision of Harrogate Borough Council.
 - The application Ref 18/02004/FUL, dated 1 May 2018, was refused by notice dated 30 March 2020.
 - The development proposed is described as full planning permission for the erection of two residential dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council adopted the Harrogate District Local Plan 2014-2035 (HDLP) in March 2020. The adoption of the Local Plan was subsequently challenged in the High Court^[1] and on 25 November 2020 the whole of the Local Plan was remitted to the Council to consider whether or not to accept the recommendations of the Inspector who examined the Local Plan in so far as they related to the New Settlement Policies, and whether or not to adopt the Local Plan with those policies.
3. The challenge related solely to the decision-making process of the Council when adopting the plan after the examination was over and did not seek to dispute any of the policies in the Local Plan that are relevant to this appeal. In respect of the Policies which are relevant to this appeal, the Local Plan was found sound at examination and the Court held that there was no error in the local plan process up to and including the conclusion of the examination process. The Court also decided that the Plan should not be quashed.
4. In these circumstances whilst the relevant policies cannot at present be afforded full weight, for the purposes of this appeal, substantial weight can still be given to the policies of the Local Plan cited on the decision notice.

Main Issues

5. The main issues are i) the effect of the proposal on the character and appearance of the area with particular reference to the Knaresborough

^[1] Flaxby Park Limited v Harrogate Borough Council [2020] EWHC 3204 (Admin)

Conservation Area (KCA); ii) the effect of the development on existing trees and biodiversity; and iii) whether the proposed development would be in an appropriate location for new housing having regard to the spatial policies of the development plan.

Reasons

Character and appearance

6. The appeal site is located to the west of Abbey Road, a narrow lane which follows the line of the River Nidd down the western side of Knaresborough before wrapping around the south and east and terminating at Wetherby Road. Abbey Road is included within an outlying continuation of the Knaresborough Conservation Area (KCA) which encompasses both sides of the River Nidd for the length of Abbey Road before extending north westerly to include the historic core of Knaresborough.
7. Abbey Road has no street lighting, footpaths or road markings and there are sections of heavy tree cover. Existing development near to the appeal site is predominantly on the western side of the lane where there are single dwellings and small groups of houses arranged in pockets along the roadside. On the eastern side there is a stone wall which separates the lane from the embankment leading down to the river. Overall, the location has a semi-rural character.
8. The appeal site is approximately midway along the eastern portion of Abbey Road. The site sits immediately to the north of an existing pocket of 3 or 4 large detached dwellings. There is a dense wooded incline along the western boundary which stretches southward and separates the development along Abbey Road from the more built up area of Knaresborough. Immediately north of the site there is a large open field which separates the site from the houses towards the northern end of Abbey Road. I understand from the appellant's submissions that the field to the north of the site has planning permission for several houses. However, I saw during my site visit that it remains undeveloped and as such it contributes to the more open feel of this part of the lane.
9. In contrast, the character and appearance of the appeal site is more enclosed, rough and rural and signals a change in the overall character of this part of Abbey Road. The absence of built form reinforces the fragmented pattern of development, which in turn contributes to the local distinctiveness of the location.
10. There is a relatively clear, albeit overgrown central portion to the centre of the site, however the dense perimeter hedge and semi mature trees throughout the site as well as the tree coverage on the opposite side of the road give it a more rural appearance. The rear of the site is heavily wooded and has a clear visual and physical connection with the woodland that adjoins the western boundary. Indeed, I saw during my site visit that the trees, undergrowth and hedging within and around the appeal site provide an effective screen to the built form beyond.
11. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the KCA. This duty is reflected in

Policy HP2 and HP3 of the HDLP which require that development affecting a conservation area protect and enhance those elements that have been identified as making a positive contribution to the character and local distinctiveness of the area.

12. The Knaresborough Conservation Area Character Appraisal 2008 (KCAC) makes specific reference to the landscape along Abbey Road noting that it is the landscape rather than the buildings that have resulted in its inclusion in the KCA. It goes on to state that whilst the location is an attractive place to live, *"the developments as a whole cannot be said to contribute positively to the character of this part of the Conservation Area"* although notes that the trees, hedges and walls diminish the impact on the KCA.
13. The proposed development would insert two large detached properties, associated accesses and hard landscaping close to the roadside and in a very prominent position. Whilst the drawings indicate that there would be a substantial amount of the existing hedgerow and tree coverage retained the scale and positioning of the built form would be such that it would entirely overpower the rough, more rural character of the appeal site. Furthermore, it would remove some of the screening that the site provides the built form to the south and diminish the physical and visual connection to the woodland to the west.
14. Whilst I accept that the individual design of the properties and the materials proposed would be generally reflective of the mixed architectural styles in the surrounding area, the proposal would nonetheless introduce built form onto an undeveloped woodland site. The scale and bulk of the proposed dwellings as well as the associated landscaping and domestic paraphernalia would appear prominent within the rural landscape when viewed from the roadside. In addition, it would result in the loss of an undeveloped gap between the built development either side of the appeal site, which would detract from the more sporadic and fragmented pattern of development along this portion of Abbey Road.
15. Therefore, I consider that the proposal would have a detrimental effect on the character and appearance of the area thus causing harm to the significance of the KCA. This harm, in the parlance of Paragraph 196 of the National Planning Policy Framework would be less than substantial and therefore must be weighed against any identified public benefits.
16. The proposal would increase the choice of housing in the locality and there would be some economic benefits associated with the construction process and incoming residents. Nonetheless, given the scale of the development these benefits would be relatively minor and would not be sufficient to outweigh the harm I have identified in relation to the character and appearance of the KCA, to which I must afford great weight.
17. Accordingly, the proposal would fail to accord with the conservation requirements of Policy HP2 and HP3 of the HDLP and the Framework.

Trees and biodiversity

18. As noted above and in the KCAC the trees and landscape within the Abbey Road part of the KCA contribute to the significance of the designated heritage asset. The submitted arboricultural information provides detailed information

on the categorisation, location and type of trees present on site as well as methodologies for the protection of those trees.

19. I note that the appellant has amended the proposals in order to try and address the Council's concerns in relation to the loss of the higher category trees. I further acknowledge that many of the trees identified for removal are lower category trees and the appellant proposes a number of replacement trees in order to mitigate any perceived loss.
20. Nonetheless, the footprints of the proposed dwellings would sit very close to a number of trees of varying size and proximity. The trees and dense undergrowth that is shown to remain would have a dominating effect on the rear gardens and elevations of the proposed dwellings which include a significant amount of glazing. I consider it likely that the quantity and proximity of the trees would give rise to concerns about safety, light and debris from future residents which would ultimately lead to pressure to reduce the dominance of the protected trees on the appeal site. This would be an unacceptable consequence arising from the relationship between the proposed dwellings and the existing trees.
21. I recognise that the appellant has endeavoured to retain as many trees as reasonably possible and I accept that protection measures could ensure the safety of the trees throughout the construction process. However, the issues outlined above would create a permanent threat to the health and longevity of the wooded areas of the site, which would go beyond the initial occupation of the appeal property.
22. For the reasons set out above, I conclude that the proposal would be harmful to trees. As such, it would not accord with Policy NE7 of the HDLP which seeks to, amongst other things, ensure that new development is designed to ensure a satisfactory relationship between buildings and new and existing trees, thus safeguarding the future health of the trees and avoiding unacceptable impacts on residential amenity.
23. The submitted Phase 1 Habitat survey was undertaken in 2017 and references a proposal for three dwellings as well as the loss of a significant number of trees. I note that the development proposals have been revised to reduce the number of dwellings as well as the number of trees to be lost. I also note the Council's submission that more recent (2019) surveys in relation to the presence of Great Crested Newts is available but this is not featured in the appellant's submissions.
24. Policy NE3 of the HDLP and paragraph 170 of the Framework require that proposals protect and enhance features of ecological and geological interest by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
25. The information before me concludes that "*the site supports potential for common amphibians, breeding birds, foraging and potentially roosting bats, as well potential for foraging badgers albeit low.*" and it provides a range of mitigation measures. I accept that the proposal includes a mitigation strategy however, the strategy is based upon a superseded proposal and dated survey results. I am also mindful that any further pressure on trees as outlined above could exacerbate any biodiversity impacts.

26. Accordingly, the proposal would not result in any biodiversity net gain nor would it protect and enhance existing features on the site. It would therefore fail to accord with Policy NE3 of the HDLP or the Framework.

Location of development

27. Knaresborough is identified as a main settlement in Policy GS2 of the HDLP. Under Policy GS2 the main settlements will provide the main focus for the provision of new homes and jobs. Development limits have been defined around Knaresborough and the appeal site lies adjacent to, but outside of these limits.
28. In locations that are outside of the defined settlement limits Policy GS3 stipulates that new development will only be supported where expressly permitted by other policies of the HDLP, a neighbourhood plan or national planning policy or where there is an absence of a 5 year supply and the proposal would meet a range of criteria.
29. The main parties do not dispute that the Council can demonstrate a 5 year supply of housing land. The appellant points out that there is some support for small scale infill development on non-allocated (windfall) sites within smaller villages. However, even having regard to the existing housing to the north and south, the appeal site is still within open countryside for planning policy purposes and I have not been directed to any other policies in the HDLP that expressly support residential development in this location. There is no adopted Neighbourhood Plan in place for this area and whilst there is much support for housing in the Framework, it also recognises the intrinsic character and beauty of the countryside and the need to protect and enhance designated heritage assets. As outlined in the character and appearance section above, the proposal would result in harm and therefore bring conflict in these respects.
30. I acknowledge the appellant's submissions in relation to the defined settlement limits and their reasoning behind their claim that the appeal site should in fact be within the limits for Knaresborough. However, the merits and reasoning behind the designated settlements contained within a development plan are not within the scope of the determination of a S78 appeal. Accordingly, planning law determines that decisions must be taken in accordance with the development plan unless other material considerations indicate otherwise.
31. I accept that the site is located immediately adjacent to the settlement boundary and that Knaresborough has a good range of services and facilities that would be accessible to residents of the proposed development. I have also had regard to the appeal determined in 2016 in relation to the site immediately to the north in which the main parties agreed that the adjacent site represented a sustainable location. However, the previous appeal was determined prior to the latest revision of the Framework and when the HDLP was at a much less advanced stage.
32. Notwithstanding the above, even if I were to find in favour of the appellant in relation to the location of the site, it would not outweigh the harm that I have identified in relation to the other main issues.
33. Consequently, I conclude that the proposal would fail to accord with the spatial policies of the development plan as set out above and would therefore not be an appropriate location for housing.

Conclusion

34. For the reasons set out above and taking into account all other matters I conclude the appeal should be dismissed.

J Hunter

INSPECTOR