
Appeal Decision

Site visit made on 9 February 2021

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2021

Appeal Ref: APP/E2734/W/20/3262519

Land to south of Parkfield, Galphay Road, Kirkby Malzeard HG4 3RX

- 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 Mr J Kitching (Briahaze Village Homes) against the decision of Harrogate Borough Council.
 - The application Ref 20/02218/FUL, dated 16 June 2020, was refused by notice dated 23 September 2020.
 - The development proposed is erection of a single detached dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As the appeal site lies within an Area of Outstanding Natural Beauty, I have had regard to the statutory duty under section 85 of the Countryside and Rights of Way Act 2000.

Main Issues

3. The main issues are:
 - Whether the appeal site is a suitable location for development having regard to national and local planning policies;
 - Whether appropriate provision is made for affordable housing, open space, and village halls; and
 - Whether the proposal would conserve and enhance the scenic beauty of the Nidderdale Area of Outstanding Natural Beauty (AONB).

Reasons

Location

4. Policy GS2 of the Harrogate District Local Plan 2014 – 2035 adopted March 2020 (Local Plan) sets out the growth strategy for the district. Kirkby Malzeard is identified as a service village that has a demonstrably wider range of services and facilities than other villages within the district.
5. Development limits are drawn around the settlements identified in Policy GS2, including Kirkby Malzeard. Policy GS3 supports development within the development limits in principle subject to other policies in the Local Plan being satisfied. Outside development limits new development will only be supported

where expressly permitted by other policies in the Local Plan or a neighbourhood plan or national planning policy. The appellant refers to Policy HS3 of the Local Plan, however, there is no evidence that the proposal is a self or custom build proposal. I have not been directed to any other policies within the Local Plan which expressly permit the proposed development and there is no neighbourhood plan in place for this area.

6. There is no substantive evidence of a specific housing need in the village that would be served by the proposal. Nonetheless, there would be some broad support from paragraph 78 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) in terms of the benefits to the vitality of the community and from the delivery of a windfall site.
7. Even so, Policy GS2 and GS3 of the Local Plan accord with the guidance in the Framework and identify opportunities for rural villages to grow and thrive. There is no dispute that the Council can currently demonstrate a 5-year supply of housing. As such, the presumption in favour of sustainable development as set out in the Framework is not engaged.
8. Even if the proposed development would meet the definition of 'infill', the appeal site is outside the development limits defined in the Local Plan. I note the apparent inconsistencies of the development limits identified by the appellant. However, the Local Plan has been recently adopted and the development limits have been considered as part of that adoption process. The proposal would not accord with the plan led strategy for housing and growth in the Local Plan.
9. Consequently, the appeal site is not a suitable location for the development having regard to national and local plan policies and would conflict with Policies GS2 and GS3 of the Local Plan and the Framework.

Provision of affordable housing, open space, and village halls

10. Policy HS2 of the Local Plan requires affordable housing on sites comprising 10 or more dwellings or where the site has an area of 0.5ha or, in areas designated as rural areas under section 157(1) of the housing Act 1985, a financial contribution for the provision of affordable housing on developments comprising 6 to 9 dwellings. The approach in Policy HS2 is consistent with paragraph 63 of the Framework.
11. The effect of the Local Plan and national policy in the Framework is that it would normally be inappropriate to require any affordable housing for a single dwelling.
12. The Council considers that the appellant has sought to avoid making contributions towards affordable housing by subdividing a larger area of land into smaller plots. Although reference is made to several planning applications the information provided on these other permissions is very limited. The appellant states that not all adjacent land was in the same ownership.
13. Overall, I have very limited evidence to substantiate the Council's claim of land subdivision. In the absence of substantive evidence, neither the Framework nor the Local Plan require the provision of affordable housing in this case.
14. In relation to the requirement to provide contributions towards open space and village halls, I have had regard to policies and documents which require

developments to meet the reasonable costs of new and improved infrastructure necessary to mitigate the impacts of the development. Local Plan Policies T14 and HP7 seek to ensure new development provides new sports, open space, and recreational facilities to cater for the needs arising from the development. Supplementary Planning Document (SPD): Provision for Village Halls and SPD: Provision for Open Space are relevant to assess necessity proportional to the proposed development.

15. The Council considers that the policies and SPD necessitate contributions towards open space and village halls. I have noted the calculations provided by the Council which set out the commuted sums required to mitigate the impacts of the proposal. These sums appear to accord with the SPDs. I am mindful that no evidence has been supplied which queries either the necessity or the viability of these contributions. I am satisfied that, in accordance with Regulation 122(2) of the CIL Regulations 2010 (the Regulations) and Paragraph 156 of the Framework, the contributions are necessary, directly related to the development and fairly and reasonably related in scale and kind.
16. The appellant expresses a willingness to provide the necessary open space and village halls contributions but there is no mechanism before me to secure these. Therefore, I conclude that the proposal would fail to secure appropriate provision for open space and village halls and would conflict with Local Plan Policies T14 and HP7. It would also conflict with the relevant SPDs.
17. However, in relation to affordable housing I conclude that it has not been demonstrated that it is necessary for the development to contribute towards affordable housing and in this respect the proposal would not be in conflict with Policy H2 of the Local Plan.

AONB

18. The appeal site is located between the access road that serves the small development of houses adjacent to the appeal site from Back Lane and Galphay Road which sits at a lower level to the east side. To the north and south are existing substantial stone constructed dwellings. The property to the south is recently constructed. It has a main elevation with ground floor bay windows, central door and three first floor windows facing the extensive view to the east over the open countryside of the AONB. Similarly, the property to the north has a long main elevation facing the views to the east with a range of window openings within it.
19. The proposed dwelling would have a rural aesthetic with large barn style windows at ground level, three first floor windows and three roof lights facing Galphay Road. Views of the proposal from Galphay Road on the approach to the village would be limited due to the curve in the road, field boundary hedging and garden landscaping. From the village side the additional built form would be apparent, but this would be seen against the backdrop of existing residential development to three sides. The design and siting of the proposed dwelling would be sufficiently consistent with the established character of its neighbours to sit comfortably within the plot.
20. I appreciate that there would be large windows on the eastern elevation, but I agree with the appellant that in the context of the built form surrounding the appeal site the effect of the lighting from these windows on the wider views of

the AONB would be limited. New external lighting is not proposed and could be restricted by condition.

21. Although the development would reduce the space around the existing dwellings there is limited spacing between other adjacent properties and I am satisfied that the development would not appear incongruous or detract from the street scene.
22. Therefore, I conclude that, even when giving great weight to conserving and enhancing the AONB's scenic beauty, the proposal would conserve the scenic beauty of the AONB. The proposal would accord with Policies HP3 and GS6 of the Local Plan which supports development in the AONB where it does not detract from the natural beauty and special qualities of the AONB and where development respects the spatial qualities of the local area and responds to building densities. It would also accord with the Framework.

Conclusion

23. While I conclude that the development would conserve the scenic beauty of the AONB and there would be no need for a contribution towards affordable housing, for the reasons set out above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal is dismissed.

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Diane Cragg

INSPECTOR