
Appeal Decision

Site visit made on 23 May 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2021

Appeal Ref: APP/C2708/W/21/3270277

Land south of A65 and east of Tatterhorn Lane, Ingleton, North Yorkshire

- 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 Garnett of JW & RJ Garnett Property against the decision of Craven District Council.
 - The application Ref 2019/21296/FUL, dated 19 December 2019, was refused by notice dated 25 January 2021.
 - The development proposed is a full application for the development of four dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) whether the proposal passes the flood risk sequential assessment and exception tests taking into account the fact that the site falls within flood zone 3 and (ii) the effect of the proposal on the living conditions of future occupiers of the dwellings in respect of noise, disturbance and outlook from existing and future surrounding employment uses.

Reasons

Sequential Assessment and Exception Test

3. The appellant has submitted a site specific flood risk assessment (FRA) prepared by KRS Environmental which also includes a drainage strategy. As the appeal site falls within Flood Zone 3, as annotated on the Environmental Agency flood risk map, the FRA also includes a sequential assessment of sites within the Ingleton area that might be reasonably available to accommodate the proposed development including areas with a lower risk of flooding. There is no dispute between the parties that confining the sequential assessment search area to Ingleton is appropriate and I have no reason to disagree.
4. In respect of the sequential assessment, the appellant has considered 27 sites in the Council's Strategic Housing Land Availability Assessment (SHLAA) and the Council does not dispute the appellant's claim that all 27 '*were rejected in the SHLAA and not taken forward in the Local Plan*'. While I have not been provided with details about these sites, there is no suggestion from the Council that any of these 27 sites would now be suitable or indeed available to accommodate the proposed development.

5. Given the above, the appellant has therefore focussed on whether the five housing allocations in Ingleton in the adopted Craven Local Plan 2012 to 2032 (LP) are reasonably available. In considering this matter, the undisputed evidence suggests that the same site assessment criteria were applied in respect of the Council's approval of planning permission for housing development on a nearby flood Zone 3 site at land south of Bentham Road.¹ I am satisfied that the criteria used to determine whether the five allocated housing sites are not reasonably available is acceptable. Taking this into account, I concur with the appellant that these sites are not reasonably available.
6. In responding to the appeal, the Council comment that the sequential test is considered to be limited as it *'fails to include within the sequential test any unimplemented planning permissions for housing as alternative sites'*. It is of note that the National Planning Practise Guidance (NPPG) states that *'when applying the sequential test, a pragmatic approach on the availability of alternatives should be taken'*. The Council has not provided any specific details of any unimplemented planning permissions for housing as alternative sites in responding to the appeal or indeed any indication that any such sites would not likely to be implemented.
7. In the absence of further information from the Council, I am not certain how the appellant would reasonably be expected to be aware of any such unimplemented planning permissions or, if they existed, why they would reasonably be expected to take the view that they would not likely be implemented. In this context, and taking into account the need for pragmatism as advocated in the NPPG, I am satisfied that the sequential test has been passed.
8. I have also taken into account the NPPG which states that *'ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere'*. In this case, the Environment Agency has considered the proposed flood risk mitigation measures in the FRA and comment that *'the development would be safe without exacerbating flood risk elsewhere'*. I have no reason disagree.
9. It is of note that the proposed dwellings would be in the *'more vulnerable'* category of Table 3 of the flood risk and coastal change chapter of the NPPG. Therefore, and as I have concluded that it is not possible for the development to be located in zones with a lower risk of flooding, it is necessary to apply the exception test as outlined in paragraph 160 of the National Planning Policy Framework (the Framework). For the exception test to be passed, it should be demonstrated that a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime taking into account the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
10. In respect of part b) of the exception test, I have already concurred with the view expressed by the Environment Agency that subject to mitigation measures in the FRA, the development would be safe for its lifetime. In respect of surface water run-off from the site, it is proposed that this will be discharged at a restricted rate and that the drainage system would provide a

¹ 2018/189811/OUT

betterment compared to the existing situation. This is a matter that could be controlled by planning condition.

11. In respect of part a) of the exception test, this windfall housing site proposal would seek to boost the supply of homes in the area positively contributing to the housing provision requirement as outlined in Policy SP4 of the LP. There is no dispute that the site is in an accessible location close to facilities and amenities in Ingleton. Indeed, the site falls within an area where housing development is supported in principle in the LP. Furthermore, the proposal would seek to make efficient and effective use of a brownfield site. There would be some positive economic benefits associated with occupation of the dwellings in terms of the use of nearby facilities and amenities, and from the actual construction of the properties. I therefore find that the proposal would provide wider sustainability benefits to the community that outweigh the flood risk and hence that the exception test is passed.
12. For the above reasons, I conclude that sequential assessment and exception tests have been passed and that subject to the implementation of flood risk mitigation measures in the FRA, the development would be safe for its lifetime. Therefore, the proposal would accord with the flood risk requirements of policies SP4(h) and ENV6 of the LP and the Framework.

Living Conditions

13. I acknowledge that the Council has allocated land in its LP (i.e. IN022 & IN035) for employment purposes to the south and south east of the site. However, the Council do not dispute the appellant's evidence that no planning applications have been submitted or been approved for employment development on these sites. It does not follow, as a matter of principle, that it is not possible for employment and residential uses to co-exist. The erection of dwellings on the appeal site need not prejudice, to any significant effect, the development of the allocated employment sites.
14. If planning permission were approved for dwellings on the appeal site, it would be possible, as part of the careful future consideration of layout; design; scale; landscaping; use and possible planning condition restrictions for employment development on the allocated employment sites (most notably IN035), to ensure that the appeal development and any neighbouring employment development operated together in an acceptable and compatible manner. In this respect, I do not therefore agree with the Council that the proposal need be unacceptable from a living conditions point of view taking into account matters relating to noise, disturbance and outlook.
15. The Council's other concern relates to the position of the exiting employment site adjacent to the eastern boundary of the site and its effect on the living conditions of the occupiers of the proposed dwellings in respect of noise, disturbance and outlook. The Council does not elaborate on this issue in its appeal statement and instead seeks to rely on its officer report. The concerns raised in the officer report relate to the proximity of employment uses which '*could potentially give rise to noise and activity which would not be compatible with residential development*' and '*moreover result in poor outlook*'.

16. In this case, the evidence is that the neighbouring existing employment use is occupied by JT Atkinson Builders Merchants and the planning permission² includes condition No 05 which states *'the builders merchants hereby permitted shall only be open for trading between the hours of 0730 and 1700 on weekdays and between 0800 and 1200 on Saturdays and there shall be no operation on Sundays or Bank Holidays'*.
17. I am satisfied that in terms of 'no trading' taking place from the site, the hours of use restriction would ensure that occupiers of the proposed dwellings were always afforded a reasonable level of peace and quiet in the evenings and throughout most of the weekend (and during Bank holidays). However, I consider that the reference to 'trading' relates to the action or activity of buying and selling goods and services. This condition would not prohibit, outside of these hours, activities by staff operatives in the yard relating to say moving or storing building materials and including the use of motorised vehicles.
18. The proposed dwellings and gardens would be positioned relatively close to where the outside storage of building materials takes place. I consider that there is potential for noise and disturbance to be caused to the occupiers of the proposed dwellings in respect of the manoeuvring and reversing of vehicles (some potentially with beepers), from the revving of engines and activities associated with the moving, stacking and storing of outside building materials. This could happen at any time given the wording of condition No 05.
19. While the above noise and disturbance may be capable of being mitigated in respect of use of the dwellings, by submitting a scheme of sound insulation as part of an imposed planning condition as advised by the Council's Environmental Health service, this would not overcome the potential significant noise and disturbance effects for residents when using the proposed gardens or indeed if windows needed to be open for ventilation purposes. In reaching this view, and accepting that the Council's Environmental Health Service did not actually recommend refusal of planning permission, I would emphasise that it did comment that it had *'serious concerns that noise from the neighbouring builders merchant and public house may impact these proposed dwellings'*.
20. Owing to the position of the Masons Arms public house, I do not consider that there would likely be any significant noise or disturbance effects from use of this building. This property is already in close proximity to residential properties and the appellant's claim that there have been no complaints from residents about this commercial facility has not been disputed. Nonetheless, the car park associated with the Masons Arms public house would be in very close proximity to the dwelling shown for plot No 1. There would likely be some low level noise and disturbance associated with use of the car park, from the manoeuvring of vehicles and the interaction of people, but this on its own would unlikely be so significant in noise and disturbance terms as to justify withholding planning permission. However, there would nevertheless be some limited harm caused to the occupiers of the plot 1 dwelling from use of the adjacent car park and this therefore adds to the other harm that I have identified above.
21. The views from the rear of the dwellings would be towards the neighbouring commercial buildings. The side elevation of the builders merchants building is

² 45/2012/12859

- relatively high and wide and is in very close proximity to the boundary of the site facing proposed dwellings for plot Nos 3 and 4. Given its close proximity, height and width, I consider that it would have a significantly dominating, enclosing and intrusive impact particularly when viewed by the occupiers the proposed dwelling, including its garden, for plot No 4.
22. In addition to the above, there is real potential for the above harm to be compounded in the event that either the existing or future occupiers of the builders merchants opted to stack building materials well above the proposed 2 metre high boundary fence. I noticed on my site visit that building materials were already stacked against this boundary.
23. The appeal site boundary with the builders merchants would be more than 20 metres from the carriageway of the A65 and so condition No 06 of the builders merchants planning permission, which seeks to restrict the storage of outside materials, would not offer the control needed in this location to ensure that an acceptable level of outlook was permanently maintained for occupiers of all four dwellings. In other words, in the absence of any existing controls/restrictions on this part of the neighbouring site there is potential for the high storage of building materials and hence adverse effects on residents from an outlook point of view.
24. It is of note that no landscaping is proposed along the boundary with the builders merchants and so the position of the builders merchants building and any high storage of materials would be even more apparent to occupiers of the proposed dwellings.
25. I therefore conclude that when the development is considered as a whole, significant cumulative harm would be caused to at least some of the occupiers of the proposed dwellings in respect of noise, disturbance and outlook. To this extent, the proposal would not accord with the amenity requirements of ENV 3 of the LP and paragraph 127(f) of the Framework.

Other Matters

26. I acknowledge that the proposal would seek to boost the supply of housing in the area and that there would be some social and economic benefits associated with the proposal. Furthermore, the development of this underutilised site has the potential to improve the appearance of the area subject to achieving good design. However, the achievement of good design is about the creation of better places in which to live. In this case, the living conditions of occupiers of the proposed dwellings would be substandard in respect of noise, disturbance and outlook matters. Hence, the proposal would not create a better place in which to live. None of the other matters raised alter or outweigh my overall conclusion below.

Conclusion

27. While the proposal would be acceptable from a flood risk point of view, this is a matter of neutral consequence in the planning balance. In respect of the identified living conditions matters, significant harm would be caused to the occupiers of the proposed dwellings. I therefore conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision

should be made other than in accordance with the development plan.
Consequently, the appeal should be dismissed.

D Hartley

INSPECTOR