



Appeal Decision

Site Visit made on 17 August 2021

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Appeal Ref: APP/E2734/W/21/3275123

Birthwaite House, Birthwaite Lane, Ripley HG3 3JQ

- 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 and Mrs M Hilton against the decision of Harrogate Borough Council.
 - The application Ref 20/04483/FUL, dated 14 November 2020, was refused by notice dated 11 January 2021.
 - The development proposed is a new four-bed detached house.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the main parties against each other. These applications are the subject of separate decisions.

Preliminary Matters

3. Following the submission of the appeal a revised National Planning Policy Framework (the Framework) was published. The main parties have been given the opportunity to comment. I have taken the new Framework and any comments thereon into account in my decision. Whilst some content has been added and the paragraph numbers changed, the substance of the Framework in regard to the main issues of the case has not.
4. A number of appeal documents have been submitted by the appellants that did not form part of the planning application. Following consideration of the additional information relating to trees, the Council has stated that it wishes to revise refusal reason three on its decision notice to remove reference to "The positioning of the proposed access boundary walling within the root protection area of a mature tree". I have considered the appeal on this basis.

Main Issues

5. The main issues are as follows:
 - whether the proposed development would be in an appropriate location, with specific regard to the development strategy for the area; and
 - the effect of the proposed development on the character and appearance of the area including its effect on protected trees.

Reasons

Appropriate Location?

6. The appeal site is the southern part of Birthwaite House's garden. Birthwaite House is a stone built detached dwelling located on the edge of a small cluster of dwellings in open countryside to the north of the village of Ripley, which is identified as a Service Village in Policy GS2 of the Local Plan¹.
7. The appeal site is located outside of the defined development limits of any settlement as defined in the Local Plan. It is therefore classed as the wider countryside. Policy GS3 of the Local Plan only supports new development outside of development limits where expressly permitted by other policies of the Local Plan, a neighbourhood plan or national planning policy.
8. I have not been made aware of a neighbourhood plan covering the appeal site. The appellants identify several Local Plan policies and paragraphs in the Framework they consider give support to the proposed development.
9. Policy GS2 of the Local Plan defines the settlement hierarchy and sets out the growth strategy for the District. This policy relates to development within the development limits which is not the case with the appeal site. Policy HS3 of the Local Plan addresses self-build housing but applies to strategic sites of 500 dwelling or more and so is not relevant to the proposed development.
10. The appellants state that the proposed development represents a windfall site and would fall within the windfall allowance. The extracts used by the appellants in their statement from the Council's windfall allowance paper 2016 states that windfall sites normally comprise previously developed sites and can comprise infill sites. The appeal site would not be classed as previously developed land because the Framework defines that in its Glossary as "land which is or was occupied by a permanent structure" – which is not the case here. Nor would it be classed as infill development. Furthermore, windfall sites would still have to be assessed in terms of their conformity with the development plan and other material considerations.
11. The appellants state that the appeal site would be within walking and cycling distance of Ripley and a bus route and would contribute to the vitality of Ripley, in line with paragraph 79 of the Framework. The proposed development would contribute to the supply of housing with associated economic and social benefits, although the benefits stemming from one dwelling would be limited.
12. Paragraph 80 of the Framework seeks to avoid the development of isolated homes in the countryside unless one of the five listed circumstances apply. In this context, the word "isolated" would be taken to mean a dwelling that is physically separate or remote from a settlement. The Framework does not define what constitutes a settlement for these purposes. Whilst the surrounding area is not free from development, the adjacent properties do not form part of a recognised settlement and are surrounded by open countryside. The requirements of paragraph 80 are therefore relevant. There is no evidence before me to suggest that the proposed development would meet any of the circumstances listed in criteria a – d of this paragraph. The appellants state that the proposed dwelling would accord with criterion e which allows for an

¹ Harrogate District Local Plan 2014 – 2035, March 2020

exception to the restriction on isolated homes in the countryside where the design is of exceptional quality.

13. The architectural quality of the appeal scheme is recognised as are the sustainability credentials. However, this alone is not sufficient to satisfy the requirements of criterion e. Sufficient justification has not been provided to demonstrate that the proposed development would satisfy all of the requirements of criterion e of paragraph 80, for example, within the Design and Access Statement or the use of a design review panel or similar process.
14. The appellants refer to a number of other Local Plan policies and paragraphs of the Framework that the proposed development would comply with. Whilst this may be the case, these policies and paragraphs do not expressly permit development.
15. For the above reasons, the proposed development would not be expressly permitted by other relevant policies of the Local Plan or national planning policy.
16. Policy GS3 of the Local Plan goes on to state that in the absence of a five year supply of housing land proposals for new housing development on sites outside the development limit of a settlement will be considered in accordance with the presumption in favour of sustainable development set out in national planning policy. The Council confirms that the housing land supply stands at 7.4 years, as set out in its Housing Land Supply Update April 2021. On this basis, I am satisfied that a five year housing land supply can be demonstrated, therefore this part of Policy GS3 is not engaged.
17. The appellants have also argued that the location would be sustainable. Ripley is a relatively small village in a rural location that offers some, albeit limited, services and facilities. It would be theoretically possible for future occupiers to walk or cycle to the village, which is not far in distance terms. However, the narrow and unlit nature of Birthwaite Lane together with the lack of pavement and relatively steep incline in places would be disincentives to journeying on foot or by bicycle, especially during darker winter months or in inclement weather. Furthermore, considering the distances and nature of the roads between the appeal site and larger settlements, it seems even less likely that journeys would be made by cycling or walking although I have had regard to the appellants' information about the frequency of bus services. Overall, therefore, I find it more likely that the proposed development would generate vehicle journeys.
18. Given the housing land supply position, amongst other things, policies for the supply of housing are therefore up to date and the presumption in favour of sustainable development in paragraph 11 of the Framework does not apply. The Framework advises that local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed. Whilst giving some limited weight to the benefits associated with one dwelling, they are not sufficient to outweigh the conflict with the development plan in this instance.
19. I therefore conclude that the proposed development would not be in an appropriate location as, without sufficiently compelling reason to depart therefrom, it would undermine the Council's development strategy. As such,

the proposed development would conflict with Policy GS3 of the Local Plan, the aims of which have been summarised above. It would also conflict with the locational objectives of the Framework.

Character and Appearance

20. Policies HP3 and NE4 of the Local Plan seek to ensure that new development protects, enhances or reinforces those characteristics, qualities and features that contribute to local distinctiveness and the character of the surrounding landscape and has regard to its context. The appeal site is situated within Landscape Character Area 50: Brearton and Nidd Arable Farmland. The guidelines include the statement: "In general, settlement is scattered and small scale and proposed development which does not take account of this (and other key landscape characteristics) should be resisted". The landscape character assessment guidelines also include the aim to maintain and protect tree cover for the long term.
21. The appeal site is in an elevated position close to the top of a ridge within the garden of Birthwaite House, a two-storey stone built dwelling in a style that is typical of many of the rural dwellings and buildings in this area. The landscape around the appeal site is gently undulating attractive open countryside, comprising small to medium sized fields with small areas of woodland, individual trees and scattered groups of farm buildings.
22. I recognise that care has been taken with the design of the proposed dwelling which has sought to be sympathetic to its surroundings, through measures such as the use of natural materials including local stone and a green roof. However, it would be a large linear dwelling of a contemporary style that would represent a significant contrast between the traditional buildings nearby. Even with the use of local stone, its scale and form would not complement the surrounding built form. The proposed development would appear therefore as an incongruous feature within the landscape that would be significantly harmful to the character and appearance of the area.
23. I acknowledge that the proposed dwelling would be located further into the site to the north than the previous two schemes and this would reduce its impact when compared to these. However, due to the elevated and largely open nature of the countryside surrounding the appeal site, the proposed development would be visible in views both at close range and further away, including the Nidderdale Way which is beside the western boundary of the appeal site and to a lesser extent the public right of way to the south, in particular during winter months when there is less leaf cover. Views would also be possible from the A61 although at a further distance and whilst travelling at speed. The proposed development would therefore have a harmful degree of prominence in the landscape.
24. A number of trees surround the appeal site and would be in close proximity to the proposed development. The trees on the eastern, southern and western sides of the tennis court are covered by a Tree Preservation Order (TPO). The trees on the appeal site are visually prominent in the surrounding area and contribute positively to its character and appearance.
25. As part of their appeal submission, the appellants included a solar strike/shadow study which identified the minimal effect of any shadowing caused by the trees at 25m in height at different times throughout the day on

the summer and winter solstices and spring equinox. The appellants also submitted solar pv generation comparison information based on 25m trees that calculates that, although there would be some limited potential reduction in generating capacity, the resulting reduction in efficiency would be minimal as would the reduction in income.

26. On this basis, I am satisfied that the proposed dwelling would be located at an appropriate distance from the protected trees such that there would not be a significant future risk to them. As such, I find no conflict with Policy NE7 of the Local Plan which requires that the design of new development ensures a satisfactory relationship between buildings and existing trees which safeguards the future health of the trees, amongst other matters.
27. Notwithstanding this, and for the above reasons, the proposed development would appear as an incongruous feature within the landscape which would be harmful to its character and appearance. It would therefore conflict with Policies HP3 and NE4 of the Local Plan, the aims of which have been summarised above. It would also conflict with Policy HP5 of the Local Plan which seeks to ensure that the recreational and amenity value of public rights of way is not undermined by new development.

Other Matters

28. I have had regard to the benefits put forward in support of the proposed development including its eco credentials and the consideration that the appellants have given to how biodiversity within the site could be enhanced.
29. I note the lack of local objections to the proposed development. However, this lack of objection does not outweigh the harm that I have identified.
30. The appellants have drawn attention to a number of paragraphs in the Framework and policies of the Local Plan that give support to the proposed development. Although the proposed development would be consistent with certain policies and paragraphs of the Framework identified by the appellant, this does not outweigh the significant harm that I have identified and the resulting conflict with the development plan. There would be an absence of harm with other paragraphs of the Framework identified by the appellants. An absence of harm is a neutral factor and does not outweigh the harm that I have identified.

Conclusion

31. The appeal site would not be an appropriate location for new housing as it would conflict with the development strategy for the area and the proposed development would cause significant harm to the character and appearance of the area. I have found that the proposed development would not cause an unacceptable impact to protected trees. This is a neutral factor and does not outweigh the harm that I have identified.
32. I acknowledge the benefits of the proposed development. However, these benefits do not, individually or cumulatively, outweigh the harm that I have identified.

33. The proposed development would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR