The Planning Inspectorate

Appeal Decision

Site visit made on 27 September 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2022

Appeal Ref: APP/G2713/W/22/3295310
Land East of 1-4 West View, Borrowby

- 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 Borrowby Ltd against the decision of Hambleton District Council.
- The application Ref 21/01943/OUT, dated 4 August 2021, was refused by notice dated 12 October 2021.
- The development proposed is a residential development for up to 5 Dwellings, including Access, with all other matters reserved.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline planning permission, with only access considered at this stage and all other matters reserved for future consideration. Several indicative site layouts are included with the appeal, and I have taken these into account for illustrative purposes only.

3. After refusal of the planning application, but prior to the submission of the appeal, the Council adopted the new Hambleton Local Plan (LP) in February 2022. This supersedes the previous development plan and Interim Planning Guidance on which the application was refused. Both parties have referred to the relevant policies of the LP in their respective statements and I am satisfied that neither party has been prejudiced in this regard.

Main Issues

4. The main issues are as follows:

   - Whether the location of the appeal site would be harmful to the character and appearance of the area having regard to the spatial strategy of the development plan;
   - Whether the proposal would provide a suitable housing mix with regards to size, type and tenure; and
   - Whether the proposal would make suitable provisions for affordable housing.

Reasons

Character and Appearance

5. The appeal site is a roughly triangular shape located to the east of the main built form of the village of Borrowby. At the time of my site visit, the fields

were separated from one another by fencing and bound to the west by houses and to the east by Oaktree Bank. There is an existing field access from West View, although the proposal would create a new vehicular access from Oaktree Bank.

6. Borrowby is identified as a Secondary Village in Policy S3 of the LP, which goes on to advise that limited development will be located in service villages and secondary villages where there are a good range of services and facilities to support the level of growth proposed. I note that the accessibility of services and facilities is not in dispute. With regards to housing development that comes forward during the plan period, this is considered an important additional supply of homes and will be supported as set out in Policy HG5.

7. HG5 pertains to windfall sites and differentiates between proposals within the built form of defined settlements and adjacent to the built form of Service, Secondary and Small Villages. Policy S5 advises on the difference between the two considerations, which defines built form as the closely grouped and visually well related buildings of the main part of the settlement and land closely associated with them. The policy gives several exclusions to built form, including at part c; gardens, paddocks and other undeveloped land on the edge of the settlement where this land relates more to the surrounding countryside than to the main part of the settlement.

8. The appeal site was undeveloped at the site of my site. The fields are devoid of built form and as such, have an open and rural character. I note that the appellant's appeal statement describes the site as agricultural land. As such, it is reasonable to conclude that the land relates more to the surrounding countryside than the main part of the settlement.

9. Policy HG5 states a proposal for housing development on a site adjacent to the built form of a defined village will be supported where the proposal demonstrates compliance with five criteria. Part c) of HG5 requires proposals to represent incremental growth of the village that is commensurate to its size, scale, role and function. The Council seems to agree that the proposal would meet the criteria in this part of HG5, and from my reading part c) does not require an assessment of character and appearance. The Council offer no comment on Part d) and there is nothing before me to indicate the appeal is important to the historic form and layout of the village.

10. Part a) of HG5 requires that a sequential approach to site selection has been taken where it can be demonstrated that there is no suitable and viable previously developed land available within the built form of the village. I have been provided with a link to the Council's online Brownfield Register, although this did not provide any substantive information. Subsequently, the appellant has referenced two other sites, but I have nothing further on either of these and there is little to demonstrate that there are no suitable and viable sites as required by HG5 a). The evidence is lacking in this regard.

11. Even if I was to accept that there are no suitable or viable previously developed sites in Borrowby, part e) of HG5 requires proposals to have no detrimental impact on the character and appearance of the village, surrounding area and countryside or result in the loss of countryside that makes a significant contribution to the character or setting of that part of the village.

12. Borrowby is predominantly linear in form, particularly from Oaktree Bank to the junction with Gate Lane. Buildings generally front the road through the village and form a largely consistent building line, albeit with a few exceptions. The appeal site comprises long and narrow fields which retain their historic patterns between West View and Oaktree Bank. Regardless of a lack of landscape designations, the appeal site therefore forms part of an attractive and valuable transition between the distinguishable edge of this built-up area and the wider expanses of open countryside to the east.

13. The proposal to erect five dwellings, albeit in outline form, would erode the transitional and agricultural character of the appeal site and the rural setting of the village with a significant urban incursion. This harm would be compounded by inevitable domestic paraphernalia, hardstandings and the parking of vehicles which would reinforce the incongruity of dwellings which would not front the main thoroughfare of the village.

14. I have had regard to the submitted Landscape and Visual Assessment (AAH Planning Consultants June 2021), which includes photomontages to demonstrate that the development would be largely contained due to the built form of the village and boundary foliage. However, the access to the site from Oaktree Bank would offer clear views and the dwellings would appear readily apparent to road users, walkers and residents of the dwellings adjacent. Any additional planting along this boundary would take considerable time to mature and even so, the 15-year image shows the dwellings would still be readily evident locally.

15. I have considered the mitigation measures proposed by the LVA. Despite the retention of boundary treatments and inclusion of green linkages, among other things, I disagree that the proposal overall would improve the landscape; rather, it would be harmful as explained above.

16. My attention is drawn to three approved planning applications[1] for housing in the village. I have not been provided with any further information on these, other than that they were also adjacent to the main built form of a settlement. Evidently, these were approved prior to the adoption of the LP and in any event, each proposal is assessed on its own merits. As such, none of these approvals provides convincing justification that the proposal before me should be allowed on this basis.

17. Based on the foregoing, the proposal would harm the character and appearance of the area owing to its location adjacent Borrowby. This would be contrary to Policies S1, S5 and HG5 of the LP, which advise, among other things, that development in the countryside will only be supported where it is in accordance with national planning policy or other policies of the development plan and would not harm the character, appearance, and environmental qualities of the area in which it is located.

Housing Mix

18. Part b) of Policy HG5 requires proposals to provide a suitable housing mix in terms of size, type and tenure. Although I take on board the Council's concern in this regard, the proposal is in outline form, with layout and scale reserved for future consideration. Based on the evidence before me, there is no reason

[1] 17/00495/FUL, 19/02624/OUT & 21/00329/OUT

why the proposal could not provide a suitable mix were the proposal to progress to agree those reserved matters. As such, the proposal would accord with Policy HG5(b), which seeks to provide a suitable housing mix, type and tenure.

Affordable Housing

19. Policy HG3 of the LP states the Council will seek the provision of 30% affordable housing, unless subject to exceptions, and in all cases where affordable housing is provided development will be expected to ensure a mix of tenures and design requirements, among other things. I note that the appellant is agreeable to providing affordable housing contributions, with details proposed to be secured by condition. Wording is offered to that effect.

20. I am directed to relevant caselaw[2] on securing affordable housing via planning condition and to the Planning Practice Guidance (PPG) which advises that it may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990[3].

21. However, this is a generalised approach. In my view, in order for affordable housing in particular to be provided effectively, arrangements must be made to transfer it to an affordable housing provider to ensure that appropriate occupancy criteria are defined and enforced. This also ensures that it remains affordable to first and subsequent occupiers. The legal certainty provided by a planning obligation, (either a Section 106 agreement or unilateral undertaking) makes it the best means of ensuring that these arrangements are effective.

22. Moreover, the PPG advises that a positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers, is unlikely to pass the test of enforceability[4].

23. The PPG does state that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). However, nothing that I have seen or read leads me to conclude that the development is complex or that its delivery would otherwise be at serious risk.

24. I have had regard to the appeal decisions[5] submitted by the appellant where both Inspectors applied conditions to secure affordable housing. However, these were for 80 and 226 dwellings respectively and from the decision letters provided to me, were materially different to the proposal before me. Although I am also provided with reference numbers for planning applications approved[6] by the Council where affordable housing has been secured by condition, I have no further information on any of these.

[2] Zins, R (On the Application Of) v East Suffolk Council [2020] EWHC 2850,
[3] Paragraph: 011 Reference ID: 21a-011-20140306
[4] Paragraph: 010 Reference ID: 21a-010-20190723
[5] APP/G2713/W/16/3161503 & APP/G2713/A/14/2223624
[6] 15/01499/OUT, 15/00905/OUT & 15/01656/FUL

25. To conclude on this main issue, the proposal would not provide the necessary provision of affordable housing due to the absence of a suitable agreement to ensure this benefit. This would be contrary to Policy HG3 of the LP which seeks to maximise the delivery of affordable housing across the plan area in order to meet identified requirements.

Other Matters

26. The Council has raised additional concern regarding the lack of Green Infrastructure and Biodiversity. However, I have nothing substantive in either regard other than refence to the relevant the policies of the LP. Given I am dismissing the appeal on other matters, I have not considered these further.

Planning Balance

27. The appellant states the proposal would provide 'much needed' housing in the village. However, there is nothing before me to indicate this level of need, and neither party has made me aware of the Council's current housing land supply position. Regardless, the proposal would provide five additional units to the Council's existing stock, and this is worthy of positive weight. Considering the scale of the proposal, this weight would be limited.

28. There would be a minor boost to local services and facilities created by additional residents in the area. These local services would be directly accessible from a pedestrian link to the village from the site. A small area of public open space is proposed in the indicative site layout and the Council would collect some additional tax and evidently a new homes bonus. There would also be some employment created by the construction of the dwellings, although this would be temporary. Although it is mentioned that maintenance on the properties would be a further benefit, there is no guarantee local tradespeople would be used for this. Overall, these considerations are worthy of some limited additional weight.

29. Providing net gains in biodiversity is required to meet policy requirements in accordance with the National Planning Policy Framework. A lack of objection from some consultees would similarly neither weigh against nor in favour of the proposal.

Conclusion

30. The proposal would conflict with the development plan taken as a whole. While I have considered the benefits of the proposal, these would not outweigh the harm I have identified. For this reason, and having regard to all other matters raised, I conclude that on balance the appeal should be dismissed.

C McDonagh

INSPECTOR