



Appeal Decision

Site visit made on 1 November 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/W9500/W/22/3301450

Land west of Highfield, Sled Gates, Fylingthorpe

- 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 SIW Properties against the decision of North York Moors National Park Authority.
 - The application Ref NYM/2021/0351/OU, dated 3 May 2021, was refused by notice dated 12 January 2022.
 - The development proposed is residential development up to 5 dwellings with means of access to, but not within, the site to be considered (all other matters reserved for later approval).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with approval of access sought. Detailed matters relating to layout, appearance, landscaping and scale are reserved for future consideration. I have determined the appeal on this basis.

Main Issues

3. The main issues are the effects of the proposed development on:
 - highway safety; and
 - biodiversity, with regard to the roadside hedgerow.

Reasons

Highway Safety

4. The proposed site access would be on to Sled Gates, one of the entrances to the village of Fylingthorpe. Although it is subject to a 30mph speed limit at the point where the site access would be located, the appellant's traffic surveys undertaken in October 2021 show that the 85th percentile speed of vehicles approaching the site from the northeast (from the village) was 32.7mph and 38.4mph from the southwest (towards the village).
5. The appellant used the guidance in Manual for Streets (MfS) to calculate appropriate visibility splays based on the recorded speeds. This includes adjustments to reflect the road gradient and a 2 metres set back which MfS advises may be considered in some very lightly-trafficked and slow-speed situations. A setback of 2.4 metres is normally used in most built-up situations,

- although I note that the Highway Authority appears willing to agree to a 2 metres set back.
6. The appellant calculates the resulting visibility splay requirements as 47.4 metres to the northeast (towards the village) and 68.2 metres to the southwest (away from the village). The submitted evidence and plan identify that the distance to the northeast would be achievable on the basis of a 2 metres set back. To the southwest, a distance of around 48 metres to the nearside kerb, which MfS advises should be the measurement point, would be achieved. The required splay of 68.2 metres would be achieved at a point 0.9 metres from the nearside kerb.
 7. The south west splay would not face oncoming traffic. I acknowledge that, due to the geometry of the road on the approach to the village in the vicinity of the site, overtaking would be unlikely for most reasonable drivers.
 8. However, not all the houses opposite the site appear to have off road parking provision, and a number have only relatively limited off road space available. On my site visit during a weekday morning, I observed a number of cars parked on the road outside the houses opposite, including near to the proposed access point. While I appreciate that this was a snapshot in time, there is no clear evidence to suggest that it was not representative of the general parking situation. During my site visit, I saw that vehicles passing the parked cars had to pull out and cross the centre line of the road on the approach to the proposed access point, with larger vehicles, including a local service bus, coming quite close to the nearside kerb.
 9. On this basis, the alternative measurement of 0.9 metres from the kerbside would not be appropriate. The visibility splay to the southwest would therefore fall quite well short of the required distance.
 10. I note the point raised by interested parties about the different reaction time and deceleration rate set out in Manual for Streets 2 (MfS2) when speeds are above 60kph, which is the case for the recorded 85th percentile speed of vehicles approaching from the southwest. Using the figures in MfS2 for speeds above 60kph would increase the visibility splay requirement by some distance.
 11. In order to create the visibility splays, it would be necessary to remove the stretch of hedgerow from the roadside frontage of the site, set it further back and keep it adequately trimmed. In addition, the submitted evidence indicates that not all of the roadside vegetation that would require to be maintained to avoid overhanging the proposed visibility splay is in the appellant's ownership or control. A larger visibility splay requirement would potentially require more roadside vegetation to be removed or managed.
 12. I appreciate that the average speeds recorded by the appellant's survey may be less than those set out above. Nevertheless, the 85th percentile speed is the speed at or below which 85% of motorists drive and provides an indication of the speed which most drivers consider to be reasonable. It is therefore the more appropriate measurement and is the one used in MfS.
 13. I note the appellant's contention that there would be minimal conflicts for northeast bound traffic travelling past the site due to the levels of traffic that would be generated by the proposal and the traffic volume recorded on Sled Gates. However, the lack of the required visibility, even based on the relatively

limited increase in traffic presented by the appellant, does not provide adequate justification to increase the risk to highway safety.

14. I acknowledge the appellant's submission about the lack of recorded personal injury accidents in the vicinity of the site. Nevertheless, this cannot provide confirmation of the appeal scheme's future effect on highway safety if allowed, which is the issue I must consider here.
15. The appellant contends that the Local Planning Authority was content with shorter visibility splays than now proposed for a previous planning application at the site¹. However, I have no details of that previous proposal or the considerations that were taken into account in reaching a decision. In any event, I have evaluated this appeal on its individual merits.
16. Based on the appellant's figures, there is a lack of achievability of the required visibility distances. Furthermore, there is concern about the ability to deliver the required maintenance of the roadside vegetation in the long term to ensure that it does not encroach into the proposed highway extents. Given this combination, without measures to reduce the speed of traffic passing the site, or to make it unlikely that vehicles approaching from the southwest would cross the centre line, or other measures to improve visibility, the proposal would significantly increase the potential for conflict between road users.
17. I therefore conclude that the proposed development would result in an unacceptable impact on highway safety. Accordingly, it would conflict with the highway safety requirements of Policy CO2 of the North York Moors National Park Authority Local Plan, adopted 2020 (the Local Plan).
18. There does not appear to be a dispute between the main parties that the appeal scheme would be on a small site within the main built-up area of a larger village under the provisions of Policy CO7 of the Local Plan. However, the associated supporting text requires that in determining whether a site is suitable for development, it must have satisfactory access to the existing public highway. The proposed development would not have a satisfactory access and so would not meet the requirements for a suitable site under Policy CO7 of the Local Plan in this regard.

Biodiversity

19. As noted above, the hedgerow to the front of the site would need to be removed to achieve the required visibility splays for the site access. There was a lack of consensus during the consideration of the application as to whether this hedgerow qualifies as an 'important hedgerow' under the Hedgerows Regulations 1997 (the Regulations). The further assessment² undertaken by the appellant as part of the appeal concludes that it does meet the minimum criteria. Its qualifying features relate to the ecological criteria³ set out in the Regulations. The assessment also concludes that this hedgerow and the one along the eastern boundary of the site identified as H2 qualify as Habitats of Principal Importance under the Natural Environment and Rural Communities Act, 2006.

¹ Application reference NYM/2010/0278/FL

² Ecological Appraisal, FPCR, March 2022

³ Part II of Schedule 1 of the Regulations

20. Strategic Policy A of the Local Plan sets out the approach for achieving National Park purposes and sustainable development. This includes conserving and enhancing its natural beauty, wildlife and cultural heritage. Policy ENV1 of the Local Plan sets out a presumption in favour of the retention and enhancement of existing hedgerows of value amongst other features. Where unavoidable loss is clearly outweighed by the wider sustainability benefits of the development, proposals will be expected to provide a net biodiversity and amenity gain, with appropriate replacement.
21. The appellant has indicated that the hedgerow could be translocated a short distance into the site, although there would be a gap to allow for the site access. The Hedgerow Translocation Method Statement (Method Statement) submitted in support of the appeal⁴, provides some examples of where translocation of hedgerows has been undertaken. While this is limited in detail, and noting the concerns expressed by interested parties about both the process and ecological data presented, translocation is nevertheless a recognised mitigation method to enable the retention rather than loss of important hedgerows.
22. The Method Statement identifies that the translocation would involve only a short distance and similar conditions would be created such as setting it back onto a small bank and rebuilding the front wall. In addition, the Method Statement recommends reinforcing the hedgerow with native locally appropriate species. There is no substantive evidence before me to indicate that translocation would be unsuccessful in this case. Further details of the translocation and additional planting within the hedgerow and wider site could be secured by a condition.
23. Were I to have found the appeal scheme acceptable in terms of highway safety, translocation would enable the retention of the hedgerow, albeit further from the roadside, so minimising harm to biodiversity interests.
24. I therefore conclude that the proposed development would not have an unacceptable effect on biodiversity, with regard to the roadside hedgerow. As such, it would not conflict with the requirements of Strategic Policy A or Policy ENV1 of the Local Plan which have been summarised above.

Other Matters

25. There is no evidence before me to suggest that paragraph 11d) of the National Planning Policy Framework (the Framework) is engaged. Nevertheless, the proposed development would make a contribution to the supply of housing, including potentially family housing, on a small site in the main built-up part of a larger village within reasonable walking distance of its services and facilities. It would be consistent with the Government's objective to significantly boost the supply of homes. The proposed development would also create some limited employment during construction and the additional residents would support local services and facilities. These matters weigh positively in favour of the proposal.
26. The appellant contends that there would be opportunities for biodiversity net gain on the site. Although it is not quantified, further details could be required through a condition, and this has some positive weight.

⁴ Prepared by FPCR, dated 16 December 2021

27. The appellant contends that there are no other obvious or available sites within the village that could deliver principal housing for families, and the appeal scheme therefore represents the only opportunity to deliver such accommodation in this larger village. However, I have not been presented with robust evidence to clearly demonstrate that this is the case.
28. The appellant has identified a number of Local Plan policies and Framework paragraphs relating to matters including landscape quality, design, designated heritage assets and ecological sites, flood risk, contamination and land stability it is contended that the proposed development would accord with. While this may be the case, a lack of harm is a neutral consideration in the balancing exercise.
29. None of the other matters raised alter or outweigh my overall conclusion on the harm that would be caused by the proposal.

Conclusion

30. I have found that the proposal would be acceptable in terms of its effect on biodiversity, with regard to the roadside hedgerow. However, I am unable to conclude that it would be possible to construct up to five dwellings on the site without unacceptable harm being caused to highway safety. This is a matter of overriding concern and to this extent there would be conflict with the development plan when considered as a whole. Therefore, the appeal should be dismissed.

F Wilkinson

INSPECTOR