



Appeal Decision

Site visit made on 13 December 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/N2739/W/22/3304072

Land off Gateforth Lane, West Haddlesey

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Mr Robert Youngman of Indigo Architecture Ltd against Selby District Council.
 - The application Ref 2021/1097/OUT, is dated 2 September 2021.
 - The development proposed is erection of one dwelling (all matters reserved).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address and the description of development from the appeal form in the interests of clarity and brevity. I have removed words from the description that are not acts of development.
3. The planning application was submitted in outline form with all matters reserved for future consideration. I have dealt with the appeal on this basis and I have treated the submitted plans as being illustrative only.

Main Issues

4. The main issues are:
 - whether the location of the proposed development would be acceptable, having regard to the development plan policies;
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposal would accord with national guidance with regard to flood risk; and
 - the effect of the proposed development on protected wildlife species, specifically bats and nesting birds.

Reasons

Location

5. The appeal site is a parcel of land located along Pale Lane on the fringes of West Haddlesey. The site has a somewhat overgrown appearance and includes, on its edges, several small buildings which are in a poor state of repair. Trees

located adjacent to the site boundaries, form a loose hedgerow bounding the highway verge that is reflective of nearby field boundaries. In views on the approach to the village from the west, the vegetation at the appeal site is seen alongside neighbouring hedgerows and trees which together form part of the attractive rural countryside setting to the village.

6. The site adjoins fields to the north and east, whilst a large agricultural field lies over the road opposite the site. The site lies immediately to the north of a residential property which fronts Pale Lane. Further south lies another residential property fronting Pale Lane. This is positioned adjacent to the junction with the main road through West Haddlesey. The majority of residential development within the settlement consists of ribbon development to either side of this main road.
7. Consistent with the approach in the National Planning Policy Framework (the Framework) Policy SP2 of the Selby Core Strategy (2013) (the CS) sets out the Council's spatial development strategy. It seeks to direct the majority of new development to the towns and more sustainable villages. West Haddlesey is defined as a 'secondary village'. These are settlements with fewer services, in more remote locations away from principal roads and with poorer levels of public transport.
8. Policy SP2 sets out that a limited amount of residential development may be absorbed inside the development limits of secondary villages, including, where it will enhance or maintain the vitality of rural communities. Outside of development limits, termed countryside, development is limited to the replacement or extension of existing buildings; the re-use of buildings; and well-designed new buildings that would contribute to and improve the local economy and enhance and maintain the vitality of rural communities. Exceptions are also permitted for new development that meets a need for affordable housing as well as the other examples set out in the Framework such as housing a rural worker.
9. The appeal site lies outside of the development limits of West Haddlesey, albeit adjacent to its northern boundary. It is proposed to construct a new dwelling on the appeal site. Notwithstanding the outline nature of the application, the indicative plans show a large building positioned away from the site boundaries. Given the likely significant difference in scale of the proposal compared to that of the existing buildings, the change of use required, and the likely location of development within the central part of the site, I am not convinced that the proposal would amount to the replacement of the existing buildings. Indeed, it could be constructed without removing any of the buildings. Furthermore, the appeal site, being agricultural in use, does not constitute previously developed land.
10. Similarly, the proposal would not involve any extension of the existing buildings, nor would it be for their re-use. The proposal would also not involve any economic development. There is no evidence before me to indicate that the proposal would meet a need for affordable housing.
11. As such, I conclude that the location of the proposed development would not be acceptable having regard to the development plan policies. In this regard the proposal would conflict with Policy SP2 of the CS and the spatial development strategy, described above.

Character and Appearance

12. Whilst the site is bounded by a loose hedgerow, views of the proposed dwelling would still be evident through the vegetation when approaching the village from the west as well as from Pale Lane. Furthermore, I note that hedges change over time and cannot be relied upon to provide the same degree of screening in the future as they do now. Indeed, into the future, occupiers may seek to remove some of the trees to avoid shading, install new boundary treatments, or open up views over the open fields opposite.
13. The proposal would also lead to the creation of a new access, boundary treatments, garden and parking areas with the inevitable proliferation of domestic paraphernalia that one would expect from a permanently occupied dwelling. As such, the erection of dwelling here would inevitably urbanise the appeal site and would represent an encroachment into the countryside setting to the village, adversely affecting its character. Furthermore, given that the village is characterised by ribbon development along the main route through the village, an additional dwelling extending the village out along Pale Lane would fail to reinforce local distinctiveness.
14. For the above reasons the proposed development would result in moderate harm to the character and appearance of the area. The proposal would therefore conflict with Policy SP19 of the CS and Saved Policy ENV1 of the Selby Local Plan (2005) (the LP), which together seek to provide high quality design that has regard to the character and appearance of the area and reinforces local distinctiveness.
15. There would also be conflict with paragraph 130 of the Framework which sets out that planning decisions should ensure new developments function well and add to the overall quality of the area; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; and are sympathetic to local character. Conflict would also occur with Framework paragraph 174 which seeks to ensure planning decisions contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Flood Risk

16. The Environment Agency Flood Maps identify the vast majority of the site as being within Flood Zone 3a. As defined in the Planning Practice Guidance (PPG) that zone is defined as having a 'high probability' of flooding, second only in terms of potential vulnerability to the functional floodplain.
17. Framework paragraph 159 states that inappropriate development should be avoided by directing development away from areas at higher risk of flooding. Framework paragraph 162 seeks to steer new development to areas with the lowest risk of flooding through requiring the sequential test for new development. It sets out that development should not be permitted if there are 'reasonably available sites', appropriate for the proposed development, in areas with a lower risk of flooding. Similarly, Policy SP15 of the CS seeks to ensure development in areas of flood risk is avoided wherever possible, through the application of the sequential test and exception test.

18. The PPG¹ guides that the search area to apply the sequential test across will be based on the development type proposed and relevant spatial policies. The applicant will need to identify whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments, such as sites currently available on the open market.
19. The application was accompanied by a Flood Risk Assessment (FRA). The FRA correctly identifies the site as being within the Environment Agency Flood Zone 3a. It also identifies the need for a sequential test. However, there was no sequential test provided with the application. Nonetheless, the appellant's statement argues: *'it is clear when considering the settlement as SDC consider it to be, that there are no deliverable or developable sites within or immediately adjacent to West Haddlesey'*. This is not supported by any specific evidence and therefore I cannot be certain that a full search of reasonably available sites has been carried out.
20. Having regard to the above, the appellant indicates that part of the village lies within Flood Zone 2, an area at a lower risk of flooding than the appeal site. Sites within or adjacent to this part of the village could be sequentially preferable. However, I have not been provided with evidence of a search of sites in this location.
21. I therefore find that the proposal has failed to meet the requirements of the sequential test. As such I cannot be certain that there are no other reasonably available alternative sites for the proposed development at locations where the risk is less. Such fundamental matters relating to the location of the development cannot be dealt with by planning condition. Given these findings, it is not necessary to consider the exception test.
22. As such, for the above reasons, I conclude that the proposed development would conflict with paragraphs 159, 162 and 167 of the Framework which together, seek to ensure new development avoids areas of current or future flood risk and does not increase the risk of flooding elsewhere. There would also be conflict with Policy SP15 of the CS, described above.

Protected Species

23. Bats and wild birds are protected by law² and their presence is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. There is a statutory duty on me to have regard to the conservation of biodiversity³.
24. ODPM Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
25. I have not been provided with any distribution records of bats in the locality. However, the appeal site is adjacent to farmland with trees and hedges within

¹ Paragraph: 029 Reference ID: 7-029-20220825

² Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981).

³ Section 40 of the Natural Environment and Rural Communities Act 2000, as amended.

it and neighbouring sites. There is a watercourse reasonably close by. The trees could provide habitat for bats or nesting birds. There could be small crevices in the masonry of the buildings that may be suitable for roosting bats, whilst the interior of the roofed sections of the buildings may provide nesting opportunities for birds or further roosting potential for bats.

26. The appellant has not provided a protected species survey. Whilst I sympathise with the appellant with regard to the communication from the Council on this matter, on the basis of the information before me, I cannot be certain as to the extent to which protected species may be affected by the proposed development. Furthermore, if protected species were affected, I cannot be certain as to what mitigation, if appropriate, may be required. In this regard, paragraph 180 of the Framework states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
27. For the above reasons, I cannot conclude that the proposal would not adversely affect protected species, specifically bats and nesting birds. The proposal would therefore conflict with Policy SP18 of the CS and Saved Policy ENV1 of the LP which together, in summary and amongst other things, seek to ensure that development proposals avoid negative impacts on biodiversity. It would also be contrary to paragraph 174 (d) of the Framework which amongst other things, seeks to minimise impacts on, and provide net gains for, biodiversity.

Other Matters

28. I have had regard to the Case Law⁴ the appellant has provided with regard to development limits boundaries and the relevance of the development plan. I accept that there will be cases where a development can be considered to be acceptable despite it being outside of a settlement boundary, even when the Council can demonstrate a five year housing land supply. Moreover, I agree that there will be instances where the situation has changed on the ground to such an extent since adoption, that development plan policies, including those governing development limits boundaries, can be considered to be 'out of date'.
29. The appellant's argument that development limits boundaries are out of date is based upon the position of the gateway signs to the village. However, it is unclear whether these were installed before or after the development limits lines were drawn in 2005. Indeed, it may be that the position of the signage was taken into account in formulating the development limits. Furthermore, in my experience it is common for such markers to be positioned ahead of built development and often they do not reliably correspond to the built form of the settlement. The present position of the gateway signs, alone, is therefore not convincing evidence that the development limits, as drawn, are out of date. Similarly, whether a settlement appears in a postal address is not indicative of being within the built form of a settlement for the purposes of planning policy. These arguments therefore carry limited weight.
30. I accept that paragraph 79 of the Framework states that planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. However, this approach will have been taken

⁴ Secretary of State for Communities and Local Government v Taylor Wimpey UK Ltd [2019] EWHC 3158; Wood v Secretary of State for Communities and Local Government [2015] EWCA Civ 195; Peel Investments v Secretary of State for Housing, Communities and Local Government [2020] EWCA Civ 1175.

into account when formulating the Council's housing strategy. Nonetheless I accept that there would be economic benefits arising from the construction and occupation of a dwelling. However, owing to the small scale of the proposal these benefits carry limited weight.

31. The Framework refers to significantly boosting housing supply, however this proposal would relate to a single dwelling and therefore the benefits in that regard are limited. Nevertheless, it is common ground that the Council can demonstrate a five-year supply of deliverable housing sites. Moreover, I have found that the proposal would conflict with the development plan and the Framework with regard to flood risk, protected species and character and appearance.

Conclusion

32. There are no material considerations that, in this instance, justify taking an approach contrary to the adopted development plan and spatial development strategy having regard to the requirements of s38(6) of the Act⁵. I have considered all other matters raised, including the approach in the Framework, but none outweigh the conclusions I have reached. For the reasons set out above, I dismiss the appeal.

Paul Martinson

INSPECTOR

⁵ Planning and Compulsory Purchase Act 2004.