



Appeal Decision

Site visit made on 10 January 2023

by A Caines BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2023

Appeal Ref: APP/E2734/W/22/3310181

Land at Back Lane, Kirkby Malzeard, Ripon

- 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 Frederick Atkinson against the decision of Harrogate Borough Council.
 - The application Ref 22/02523/FUL, dated 24 June 2022, was refused by notice dated 30 September 2022.
 - The development proposed is change of use of land to form a holiday site comprising 3 holiday yurts with associated facilities, parking and access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect on the landscape and scenic beauty of the Nidderdale Area of Outstanding Natural Beauty (AONB), and the public right of way (PROW) network;
 - The effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance;
 - Whether the site is a suitable location for the proposed development with regards to development plan policy.

Reasons

AONB

3. The appeal site lies within the AONB and as such forms part of a landscape recognised for its scenic beauty. Great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues.
4. The appeal scheme would be located within part of a field on the north side of Back Lane¹, beyond the edge of the village. To the east is Pipistrelle Barn (a recently converted rural building), and to the west is another rural building (with planning permission for residential conversion). Otherwise, the area to the north of Back Lane is scarce of development and there is a clear and distinct boundary to the northern edge of the settlement. Consequently, the

¹ Kirkby Malzeard has a Back Lane north and a Back Lane south, but the appeal site relates to Back Lane north.

site does not appear as a gap between a built up part of the village, nor as a logical extension to it. Rather it is an integral part of the open rolling countryside surrounding the village. It has a tranquil rural, pastoral character, which despite the boundary hedges, can be easily appreciated from Back Lane and in views along the PROWs that run north to south on both sides of the site.

5. In the Harrogate District Landscape Character Assessment (HDLCA) the site is within the Kirkby Malzeard and Grewelthorpe landscape character area, which is described as a beautiful, interesting, and well-tended landscape. The key characteristics of the area that are evident at the appeal site include the distinct pattern of thin, rectilinear early enclosure fields bounded by hedges, a network of footpaths and minor roads, linear village form, and stone vernacular buildings. The HDLCA highlights that the setting of the village is sensitive to change and that developments that could alter the character of fields at the village edges should be discouraged.
6. In addition, the Kirkby Malzeard Village Design Statement identifies the relationship between built development, open spaces, streets and routes through the village, and the connection with the wider countryside, as a key factor in defining the character of the village. It also describes how the agricultural aspect of the village is enhanced by the traditional presence of the two back lanes and the long narrow fields that run from the rear of the lanes.
7. The Yurts would be spread across the site and be accompanied by incidental development, lighting, and a linked parking area to the east of Pipistrelle Barn. Although described as being of a temporary nature, the development would not be perceived as such. The introduction of the Yurts and other related development that would be permanently at the site would dramatically alter the character of the field in which they would be located. There would be built development, parking, and associated activity where currently there is simple pasture, reducing and unacceptably damaging the undeveloped qualities of the site and its positive contribution to the landscape setting of Kirkby Malzeard and the scenic beauty of the AONB.
8. Furthermore, the architectural vernacular of the area is strongly characterised by visually robust buildings of traditional form and materials. Back Lane is typical of this character with a number of former agricultural buildings which reflect the agricultural origins of the village. The Yurts, with their cylindrical form and conical canvas roofs, mounted on large timber decks with hot tubs, would be markedly out of keeping with the traditional character and distinctive qualities of the area.
9. I note the intention to retain existing hedgerows and for new hedge planting along the northern boundary and car park. Hedgerows are a feature of this countryside area and so the additional planting would respect the character of the landscape in that regard. The new hedgerow planting would also provide a sense of physical containment to the site. Nevertheless, I am not satisfied that this would provide sufficient mitigation for the likely adverse visual impacts of the development or the harm it would cause to the character of the landscape.
10. With regard to PROWs, I realise that the appeal scheme would not result in the loss or unreasonable obstruction of any PROWs, including from the parking arrangements, but it would be visible from the PROWs which flank the site. These PROWs are part of a wider network of local footpaths and bridleways, and their users should be regarded as sensitive receptors. The main reason for

people using these routes is likely to be for recreation purposes and to appreciate the high quality countryside in this location. The ease of access provided by PROWs is also a key characteristic of this part of the AONB. For the reasons set out above, the development would have an adverse visual impact for users of these PROWs when leaving or entering the village. As such, the recreational and amenity value of PROWs in the area would not be protected, although the harm in this regard would be limited in degree.

11. The appellant points to other developments that have been permitted beyond the development limits of the village. However, none of these are identical to the proposal in terms of location and the type of development involved, so they have a limited bearing on the outcome of this appeal. The appellant also refers to a lack of objection from the AONB Joint Advisory Committee, but for the reasons set out above, I have found that the development would be harmful.
12. I therefore conclude that the proposal would have an unacceptable adverse impact on the landscape and scenic beauty of the AONB, and the recreational and amenity value of the PROW network. As such, there is conflict with Policy GS6 A) of the Harrogate District Local Plan 2020 (the LP), and paragraph 176 of the National Planning Policy Framework (the Framework) in respect of conserving and enhancing the landscape and scenic beauty in the AONB. There is also conflict with LP Policies HP3, HP5 A), NE4, and EC7 B), which collectively seek to ensure that development proposals, including those for rural tourism, protect, enhance, or reinforce landscape character and local distinctiveness, along with the recreational and amenity value of rights of way in the area.

Living conditions

13. As set out above, the appeal site is currently an undeveloped field beyond the edge of the village. The area has a quiet and peaceful character with minimal activity and background noise.
14. Although of a relatively small scale, the use of the site for short term holiday accommodation purposes would inevitably generate increased levels of noise through on-site activity and the rotation of new visitors. Due to the site's close relationship to a number of residential properties along Back Lane, I consider that neighbouring occupiers would be highly susceptible to the effects of increased noise and disturbance at the site.
15. The appellant aims to keep any disturbance to neighbouring residents to a minimum via management practices and close supervision from Pipistrelle Barn. A Management Plan has been put forward which includes measures such as a noise and hot tub curfew between 10.30pm-7.00am, and restriction on hen or stag parties, loud music, and dogs.
16. However, even with such measures in place, it is reasonable to expect that guests would socialise and converse outside their accommodation, particularly during periods of good weather and in the long summer evenings. This would coincide with times when neighbouring residents are more likely to spend time in their gardens and have their doors and windows open. Furthermore, the outdoor hot tubs could potentially be used in all weather conditions and as late as 10.30pm, well beyond the time when neighbouring residents could reasonably expect to be undisturbed. There would also likely be increased activity from the movement of guests and vehicles past houses along

Back Lane, potentially at unsociable hours. Consequently, the occupiers of nearby residential properties would likely experience heightened levels of noise from the site when compared to the existing baseline of very little noise and activity, notwithstanding the Management Plan. I cannot therefore rule out the potential for significant harm to the living conditions of neighbouring residents in this regard.

17. In any event, the lack of clarity on what precisely would constitute an unacceptable level of noise and 'loud music' at the site means that I have serious concerns over the ability to effectively implement the Management Plan. It would be difficult to monitor and enforce, and would put an undue onus on the Council. I am therefore not completely satisfied that the mitigation put forward by the appellant could adequately protect the living conditions of neighbouring residents with regard to undue noise and disturbance.
18. For all these reasons, I conclude that the proposal would have an adverse effect on the living conditions of neighbouring residents through increased noise and disturbance. As such, there is conflict with LP Policies HP4 C) and EC7 C) in so far as they seek to ensure that development proposals, including those for rural tourism, do not have an adverse impact on the amenities of neighbouring occupiers. It would also be contrary to paragraph 130 of the Framework, which amongst other things, aims to create places which promote health and well-being, with a high standard of amenity for existing and future users.

Location

19. In addition to matters addressed above, Policy EC7 requires proposals for new visitor accommodation in the countryside to demonstrate a requirement for a rural location, and that it cannot be located elsewhere. A further locational requirement of Policy EC7 is that new visitor accommodation should be accessible to existing local services.
20. Despite the obvious attractions in providing this type of visitor accommodation in a rural setting, there is little substantive evidence before me to demonstrate that the proposal is restricted to the appeal site or the locality. Nevertheless, the location of the site immediately adjacent to the edge of the village means that guests would be able to easily access the local services and facilities within the village without reliance on the use of private vehicles. There is also good access to the recreational opportunities provided by the surrounding PROW network.
21. In these circumstances, I find no material harm against the locational aims of Policy EC7 of the LP. In addition, paragraph 85 of the Framework recognises that sites to meet local business and community needs in rural areas may have to be found adjacent to existing settlements. Consequently, the site's location beyond the development limits of the village is not a matter which weighs against the proposal.

Other Matters

22. The Council's fourth reason for refusing planning permission refers to the potential loss of 'good to moderate' agricultural land, with the officer's report identifying the site as grade 3 agricultural land. Policy N8 of the LP seeks to

protect best and most versatile (BMV) agricultural land, which is defined as that being within grades 1, 2 and 3a of the Agricultural Land Classification. Whether the site is grade 3a (good quality) or grade 3b (moderate quality) can only be determined by site and soil examination. Although I have no technical evidence that the site is not grade 3a land, Policy N8 only requires an agricultural land classification survey to be carried out on sites of over 5 hectares. At approximately 0.18 hectares in area, the appeal site falls well under this threshold. Consequently, this is not a determinative matter in this appeal.

23. Representations were made on a range of additional matters which did not feature in the Council's reasons for refusal. However, given my findings in relation to the main issues above, it has not been necessary to explore those matters any further in this decision as it would not alter the appeal outcome.

Planning Balance and Conclusion

24. There are relevant policies within the development plan and the Framework which deal with economic and tourism matters. In this regard, the proposal would likely improve the amount and range of visitor accommodation in the area, help to support local services, and benefit the wider rural economy. Commensurate with the scale of the proposal, these are factors which weigh modestly in favour of the scheme. I have also found that the location of the site beyond the development limits of the village is not a matter which weighs against the proposal.
25. However, for the reasons set out above, the proposal would give rise to significant conflict with the contents of the development plan relating to the landscape and scenic beauty of the AONB, and in relation to the living conditions of neighbouring residents. There is also limited conflict with the development plan in relation to protecting the recreation and amenity value of PROWs. As such, the proposal conflicts with the development plan as a whole, and would not be a sustainable form of tourism development. In the circumstances of this case, material considerations, including the provisions of the Framework, do not indicate that the decision should be made other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

A Caines

INSPECTOR