



Appeal Decision

Site visit made on 16 May 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/G2713/W/23/3315241

Land adjacent to Beck Lane, South Kilvington, Thirsk YO7 2NE

- 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 Mr Roberts / Christon against the decision of Hambleton District Council.
 - The application Ref 22/01486/OUT, dated 21 June 2022, was refused by notice dated 23 December 2022.
 - The development proposed is Application for Demolition of Existing Buildings and Outline Planning Permission for 4.no dwellings (Use Class C3) with all matters reserved except access.
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Decision

1. The appeal is allowed and planning permission is granted for the Demolition of Existing Buildings and Outline Planning Permission for 4.no dwellings (Use Class C3) with all matters reserved except access at Land adjacent to Beck Lane, South Kilvington, Thirsk YO7 2NE in accordance with the terms of the application, Ref 22/01486/OUT, dated 21 June 2022, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. On 1 April 2023 Hambleton District Council merged with a number of other Councils to form a new Unitary Authority known as North Yorkshire Council. Regulation 26 of The Local Government (Boundary Changes) Regulations 2018, allows for any extant development plans to have effect as if adopted by the new Unitary Authority until such time as the new Unitary Authority adopts a plan covering the whole of its area. For the purposes of this appeal, the development plan comprises the Hambleton Local Plan 2022 (LP).
3. The application is submitted in outline form with approval being sought in relation to the matter of access. The matters of appearance, layout, scale and landscaping are reserved for later consideration. The appellant states in their submissions that it is intended that the matter of access relates to the access point onto Beck Lane only, and not to the internal access road. In their Statement of Case, the Council argues that consideration should also be given to the access road that goes beyond the immediate junction with Beck Lane. I shall return to this issue later in my decision.
4. Notwithstanding what is stated in reasons for refusal 1 and 2 on the decision notice, the main parties agree that Policy E1 of the LP is more relevant to the matters raised in reason 1 and Policy E2 more relevant to those raised in reason 2. I shall proceed with my determination of the appeal on that basis.

Main Issues

5. The main issues are:

- i) The effect of the proposed development on the character and appearance of the area
- ii) The effect of the proposed development on the living conditions of nearby residents
- iii) Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding

Reasons

Character and appearance

6. Reason for refusal 1 states that *the proposed access is a contrived form of development harmful to the character and appearance of the area owing to the nature and degree of engineering required to facilitate the access*. The engineered section in question would be part of the internal access road within the appeal site, where it runs along the side of the dwelling at Meadow View. The appellant's position is that neither this, nor the remainder of the internal access road shown on the indicative plans, are part of the proposals submitted under the reserved matter of access. The Council's position at appeal, as reflected in their reasons for refusal, is that the full extent of the internal road should form part of the consideration of the application.
7. There is some overlap between the matter of access and the matter of layout as defined in the relevant order¹. But the appellant's submission is clear that they have only put forward the access point onto Beck Lane to be considered. The Council have also suggested, without prejudice to their case, a condition that would ensure that only the access to Beck Lane would be approved if outline planning permission was granted. I shall follow the appellant's approach, not least because that is what they have applied for under the legislative framework, but also because it is not certain exactly what form the internal access road would need to take in light of the comments of the Highway Authority about highway adoption.
8. That said, due to a constraint relating to the adjacent Flood Zones, the position of the access road where it passes the side elevation of Meadow View would be fixed in the broad area it is shown on the indicative plans, with some degree of engineering needed. The appellant considers that what is shown on those plans is a worst-case scenario based on a fully adoptable highway standard, but nonetheless there is nothing before me to rule out the possibility that this option could ultimately be needed. In such a circumstance and in light of reason for refusal 1, it is necessary to consider the effect that this indicative section of the internal access road would have, in its worst-case scenario, on the character and appearance of the area.
9. Beck Lane terminates outside the appeal site with a turning head. Beyond that is the Cod Beck and a pedestrian footpath that runs alongside it. The transition at this point is firmly between the more urban form of the settlement of South

¹ The Town and Country Planning (Development Management Procedure) (England) Order 2015

Kilvington and its rural surroundings. The engineered form of the internal access road shown on the indicative plans would be somewhat at odds with the rural aspects of the surroundings found closer to the Cod Beck and beyond it. However, it would be viewed in the context of the existing Beck Lane roadway and turning head, and against the existing built form of the dwellings on that road. In such circumstances, it would integrate into the area in an acceptable manner and would not cause harm to its character and appearance.

10. The reason for refusal refers only to the impact of the access road and the nature and degree of engineering that would be required to facilitate it. However, in its Statement of Case, the Council refers to further concerns relating to the relationship of the proposed access to the existing built form along Beck Lane. Specifically, this refers to the fact that existing dwellings are served by private driveways, bounded by walls, pillars and gateways and with gardens to the front. Whilst the proposed dwellings would not have the same relationship to Beck Lane and would necessitate a shared access road, the Beck Lane street scene itself would be largely unaltered. There would therefore be no harm to the character and appearance of the area in this respect either.
11. The proposed dwellings are indicatively shown to be bungalows and they would be positioned behind the existing built development on Beck Lane. Representations made by interested persons raise concern as to the impact that the proposed development would have, as a whole, on the character and appearance of the area. However, I am satisfied that on the basis of the scale of what is shown indicatively, its location and its close relationship to the existing built form of South Kilvington, there would not be harm caused to the character and appearance of the wider area.
12. For these reasons, I am satisfied that a development could come forward at reserved matters stage which would not cause harm to the character and appearance of the area. Consequently, the proposal would accord with Policy E1 of the LP, where it seeks to protect character and appearance.

Living conditions

13. Reason for refusal 2 refers to the impact of the access on the property to the southwest end of Beck Lane. This is the dwelling at Meadow View. However, in its Statement of Case, the Council refers additionally to the impact of the proposed development upon the dwellings known as Bede House and The Millers. There are also a number of representations made by interested parties which raise concerns with respect to the impact of the proposed development on the living conditions of the occupiers of existing dwellings in the vicinity of the appeal site.
14. I have noted that the internal road would fall to be considered as part of the reserved matter of layout, but that there are notable constraints on its location due to the adjacent Flood Zones. The position of the internal access road would also be constrained by the presence of a tree subject to a tree preservation order, although it would be less constrained once it was clear of the root protection area of the tree. Again, given that there are some notable constraints on the appeal site and in light of reason for refusal 2, it is necessary at this stage to pay consideration to the impact that the proposed development would have on the living conditions of the occupiers of nearby dwellings.

15. The indicative plan shows that the internal access road would run along the side of Meadow View, behind that property and then behind the rear of Bede House and The Millers. All three properties have rear gardens of a very limited depth, and they have windows and patio doors serving habitable rooms that are located in relatively close proximity to the common boundaries with the appeal site. Except for The Millers which has established hedging, there is no vegetation or other screening located on these boundaries. Meadow View also has windows in its side elevation facing towards where the access road is indicatively shown.
16. The relationship between the side elevation of Meadow View and the internal road shown on the indicative plans would not be untypical of residential layouts, where roads pass the side elevations of dwellings. There would be a reasonable amount of distance between where the internal road is shown indicatively and the side elevation of Meadow View. This would ensure that there would be no harm to living conditions due to a loss of privacy occurring through the use of the access road. In conjunction with the fact that a limited number of dwellings are proposed, this separation would also ensure that noise levels from passing vehicles would not be unduly harmful.
17. There is scope as part of the reserved matters of layout and landscaping to address the relationship of the rest of the internal access road to the rear elevations of Meadow View, Bede House and The Millers. This could include consideration of the positioning of the internal access road in relation to the boundaries with those dwellings and the overall layout of the scheme, the implementation of screening and details of any lighting deemed necessary. It is also notable that the dwelling that is the closest to the common boundary, Bede House, would not be likely to experience the movements associated with all four proposed dwellings passing by its rear elevation, and there may be scope to reduce this further compared to what is shown indicatively.
18. The proposed dwellings themselves could be positioned far enough from the existing dwellings to ensure that no undue overlooking or loss of light occurred, and as the indicative plans show them to be bungalows their massing would not be likely to be of concern. Considerations relating to a bin collection point and turning space would be assessed at reserved matters stage. There would not be a harmful impact on the living conditions of the occupiers of other dwellings on Beck Lane, as there would not be a significant increase in movements given that the proposal is for four dwellings only. Impacts arising during the construction phase would be limited owing to the scale of what is proposed.
19. In conclusion, I am satisfied that a development could come forward at reserved matters stage which would not cause harm to the living conditions of the occupiers of nearby dwellings. Consequently, the proposal would accord with Policy E2 of the LP, where it seeks to protect living conditions. Although of lesser relevance to this reason for refusal, the proposal would also accord with Policy E1 of the LP, where it too refers to living conditions.

Flood risk

20. The appeal site lies close to the Cod Beck but subsequent to an amendment to the red line site area it falls entirely within Flood Zone 1. Following the submission of a revised Flood Risk Assessment, there is no objection to the proposal raised by the Environment Agency (EA) on flood risk grounds.

Furthermore, no objection is raised by the local drainage board or Yorkshire Water.

21. Interested persons have made representations that the area of flooding that has been experienced previously extends beyond that anticipated by the current Flood Zones 2 and 3. Such flooding it is stated would extend into Flood Zone 1 and into the area where the proposed internal access road would run. A photo of the extent of the flooding has been provided, but there is disagreement between the parties as to whether this shows the flood water at its highest level or at a time when it was receding. Concern is also raised in respect of any implications arising from climate change.
22. However, detailed information has been provided to the EA in the form of a number of revised Flood Risk Assessments. As the statutory consultee on flood risk matters the position of the EA on the proposal being acceptable on flood risk grounds carries significant weight. There is nothing substantive before me to justify reaching a decision at variance with the position of the EA. Likewise, there is nothing substantive to suggest that the proposed development would cause or worsen flood risk elsewhere, including in Thirsk.
23. For these reasons, the proposal would accord with Policies RM2 and RM3, which relate to flood risk, surface water and drainage management. There would also be no conflict with the aims of the National Planning Policy Framework (the Framework) in this regard.

Other Matters

24. There is no evidence that the appeal site is of archaeological interest or that any information in that respect is required. The Highway Authority raises no objection and on the basis of this and what I observed at my site visit, I find no reason to consider that there would be harm to highway safety as a result of the proposed development, or that Beck Lane is not suitable for providing access to it. There is also no reason why the proposal would impede use of the turning area on Beck Lane. Whilst there is not a pavement on both sides of Beck Lane it is not a through road and there are not likely to be cars travelling at speed down it. Accordingly, crossing the road to the appeal site is not likely to be hazardous.
25. A Preliminary Ecological Appraisal was submitted which included a recommendation that a minimum of two bat activity surveys be undertaken, as potential roosts for bats had been identified on the site. A second survey was then undertaken by a different ecologist to further assess the potential for the appeal site to support features which could be utilised by bats for roosting and/or as a place of shelter. This concluded that there are negligible suitable features that could provide roost suitability. On the basis of that finding, I conclude that the proposal would not cause harm to bats. There is also nothing to suggest that there would be harm to any other ecological interests, including during the construction phase.
26. Yorkshire Water make no reference to concerns relating to water pressure or to capacity at the local pumping station. There is nothing to suggest other utilities could not be supplied to the appeal site. The granting of planning permission would not affect existing access rights over land. The extent of the red line and access is shown on the amended plans and the appellant has declared on the application form that all of the appeal site is within their ownership. The

development would not have a harmful impact on the public footpath which runs along the Cod Beck close to the site and would not impede its use nor, for the reasons I have set out above, harm views from it.

27. An Arboricultural Survey was submitted with the planning application and this identifies the potential constraints posed by trees on the appeal site, including the category A Wellingtonia tree that is subject to a tree preservation order. The indicative plans demonstrate that the access road could be sited outside of the root protection area of this tree, but in any event details of that relationship would fall to be considered at reserved matters stage.
28. The proposal would result in the loss of an area of land currently in agricultural use. Paragraph 174b) of the Framework seeks to recognise the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land. However, there is no evidence before me of the agricultural grading of the land and it would appear to be in use for the keeping of sheep. In light of this and its small size, its loss for agriculture would not compromise the objectives of the Framework where it comes to agricultural land. Although reference has been made by interested parties to the loss of a safe play area for children, it does not appear that the appeal site is publicly accessible.
29. Reference has been made to an alternative access to the A61 and that in the future an application for more dwellings might be made, however I must determine the appeal on the basis of what has been proposed. It is not suggested that there would be any areas of publicly accessible open space on the appeal site and the latest indicative plan does not show an attenuation pond. Therefore, details of the future maintenance of such areas are not required. There is nothing before me to suggest that bin collection would not be possible, and this already occurs from properties on Beck Lane. Details of landscaping including new tree planting would be considered at reserved matters stage.

Conditions

30. Conditions relating to the submission of the reserved matters of scale, layout, landscaping and appearance, the relevant time period for submitting these and for carrying out the development, and a condition confirming the approved plans, are necessary to provide certainty. A condition relating to the construction of the access from Beck Lane is required to ensure that the necessary highway standards are met and a condition relating to a construction management plan is needed to ensure that the safety of the public highway is not compromised. The construction management plan condition must be a pre-commencement condition to ensure that the plan is put in place before works begin.
31. Conditions relating to foul and surface water are required to ensure that adequate drainage provision is put in. Details of existing and proposed ground levels are required to ensure that the development has an acceptable visual appearance and relationship to existing development. A condition relating to unexpected contamination is needed to ensure that any issue arising in that respect is addressed.
32. Details of external facing materials would be considered in conjunction with the reserved matter of appearance and therefore a condition is not required

relating to this. Likewise, landscaping would be a reserved matter, although a condition requiring biodiversity net gain must be imposed to ensure that this is delivered as part of the development. This must be a pre-commencement condition so that provision for biodiversity net gain and how it would be achieved is agreed before works start.

33. The EA have requested that a condition relating to the construction of the access road and the drawing contained within the Flood Risk Assessment be included. However, the specific details relating to the internal access road would form part of the consideration of the reserved matter of layout. The vehicular and pedestrian accesses within the site, together with parking and vehicular turning arrangements would also be established via the reserved matter of layout. Conditions addressing these matters are therefore not required at this stage.
34. The appeal site is located outside of Flood Zones 2 and 3 and therefore it is not reasonable or necessary on flood risk grounds to remove permitted development rights that would usually apply to dwellinghouses. The extent of the appellant's ownership appears to extend into land within Flood Zones 2 and 3 but the appeal site is of a size that would not require the storage of soil, waste, plant or materials in that area. It is therefore not necessary to impose the suggested condition relating to that matter.
35. I have reworded and combined the Council's proposed conditions where appropriate, in the interests of precision.

Conclusion

36. For the reasons given above, I conclude that the appeal should be allowed.

Graham Wraight

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 2131.001 Rev A and Proposed Site Plan 2131.024 (insofar as it relates to the point of access to Beck Lane only).
- 5) The development shall not be brought into use until the access to the site has been set out and constructed in accordance with the following requirements:
 - The crossing of the highway verge must be constructed in accordance with Standard Detail number E60.

- Any gates or barriers must not be able to swing over the existing or proposed highway.
 - That part of the access extending 10 metres into the site from the carriageway of the existing highway must be at a gradient not exceeding 1 in 15.
 - The final surfacing of any private access must not contain any loose material that is capable of being drawn on to the existing or proposed public highway.
- 6) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Construction of the permitted development shall be undertaken in accordance with the approved plan. The Plan must include, but not be limited to, arrangements for the following in respect of each phase of the works:
- wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway.
 - the parking of contractors', site operatives and visitor's vehicles.
 - areas for the storage of plant and materials used in constructing the development, clear of the highway.
 - contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.
- 7) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 8) No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, other than the existing local public sewerage, for surface water have been completed in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 9) Prior to the construction of any building or regrading of land commencing, detailed cross sections shall be submitted to and approved in writing by the local planning authority, showing the existing ground levels in relation to the proposed ground and finished floor levels for the development and the relationship to adjacent development. The levels shall relate to a fixed Ordnance Datum. The development shall be constructed in accordance with the approved details and thereafter be retained in the approved form.
- 10) No development shall commence until a biodiversity net gain scheme has been submitted to and approved in writing by the local planning authority. The scheme shall show the retention of any significant existing landscape features and shall provide details to show how a minimum 10% net gain of biodiversity will be achieved on site using the DEFRA biodiversity metric 3.1 (or the latest published version) and include a programme of work and subsequent maintenance arrangements. The development shall thereafter be carried out in accordance with the approved scheme
- 11) In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which shall be subject to the

approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared and submitted to the local planning authority for approval in writing.

-----End of Conditions-----