



Appeal Decision

Site visit made on 24 October 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal Ref: APP/G2713/W/23/3326672

Land to the east of Birkby Lane, East Cowton

- 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 B P and M Tweddle against the decision of Hambleton District Council.
 - The application Ref 21/01361/OUT, dated 11 May 2021, was refused by notice dated 20 January 2023.
 - The development proposed is outline planning application with some matters reserved (considering access) for the construction of up to 15 dwellings and means of vehicular access as amended by plans received by Hambleton District Council on 01.12.2022.
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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, treating supporting plans as illustrative.
3. The description of development on the application form is '*outline planning application for the construction of up to 21 dwellings and means of vehicular access*'. The scheme was amended during the Council's consideration of the application. The description of the development proposed in the banner heading is taken from the Council's decision notice and appeal form rather than the application form as it more accurately describes the proposal. I have determined the appeal on this basis.
4. Hambleton District Council has merged with several councils to form North Yorkshire Council. The development plans for the merged local planning authorities will remain in place for the area within the new authority until such time as they are revoked or replaced. I have determined the appeal on this basis.

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

6. East Cowton is defined as a Service Village in Policy S3 of the 2022 adopted Hambleton Local Plan (the Local Plan), which sets out the spatial distribution of new development for the area. Limited development is expected to take place

in such settlements where there are a good range of services and facilities to support the level of growth, which helps maintain the sustainability of rural communities and addresses housing requirements.

7. Policy HG5 of the Local Plan sets out the approach for windfall housing development. Different criteria apply depending on whether the proposal is within the main built form of a defined settlement or adjacent to it.
8. Policy S5 of the Local Plan defines the built form as the closely grouped and visually well related buildings of the main part of the settlement and land closely associated with them but excludes 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.
9. The appeal site is an undeveloped parcel of agricultural land towards the eastern end of the village. Given the definition in Policy S5 and the site-specific context, in my judgement, the site lies immediately adjacent to the built form of the village. It would therefore be supported by Policy HG5 provided that certain criteria are met.
10. The Council raises concerns over compliance with criterion e) of Policy HG5. This criterion states that proposals will 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.
11. East Cowton is generally characterised by a linear form of built development fronting on to the north side of the main road through the village and housing with more of a suburban character adding depth to the built form to the south. The eastern part of the village is less densely developed. Nevertheless, there are small pockets of development, including along Birkby Lane, which add some depth to the built form in this area.
12. The site can be seen when travelling along Birkby Lane and in glimpsed views between the houses along its northern boundary which front on to the main road. Given its undeveloped nature, the site does contribute to what is a more open character beyond these houses and allows an appreciation of the relationship of the village to its rural setting. However, there are residential properties to the site's northern boundary and along much of its western boundary. To the south west are some quite large industrial type buildings. To the east lies a dwelling and several agricultural buildings. This existing built development is visible in views of the site, including from vantage points along Birkby Lane and through the gaps in the houses that front on to the main road to the north. Given this context, in my judgement, the site makes only a modest contribution to the open rural setting of the village.
13. Furthermore, the site is relatively well contained. This containment is provided by the existing houses to the north and west, the house to the east along with the farm buildings which are quite extensive when viewed on the approach to the village from the south, and the southern hedge line. Due to this containment, as well as the reasons stated above, the proposal would not significantly diminish the sense of openness and would represent a natural infill rather than an encroachment into the countryside.

14. A sensitive layout for the dwellings and their gardens, a careful positioning of any areas of open space and additional landscaping within and around the boundary of the site would allow for a soft transition between the built form of the village and the countryside to be maintained.
15. Overall, therefore, while the proposal would alter the nature of the site, this would not be detrimental to the character and appearance of the surrounding area or the setting of the village.
16. The proposal would require the demolition of the dwelling at 3 Birkby Cottages to allow for the proposed access to the site. This dwelling has a very similar appearance to the other two properties in the terrace in terms of scale, the pattern of window and door openings, roofing materials and set back from the road. It is also consistent with no. 2 in terms of the use of brick and window detailing.
17. The property is of traditional form. However, the other two properties would be retained and so the composition of the built form here would still be discernible. Consequently, the character and appearance of the entrance to the village at this point would not be diminished through the removal of this property, nor would there be any harm to the character of the settlement.
18. For the reasons given, I conclude that the proposal would not unacceptably harm the character and appearance of the area. Consequently, it would accord with the requirements of Policies HG5 and S5 of the Local Plan, as summarised above.

Other Considerations – Affordable Housing

19. Policy HG3 of the Local Plan states that the Council will seek the provision of 30% affordable housing where the proposal is for over nine dwellings. The Council's officer report sets out the appellant's willingness to deliver this requirement through four on-site affordable units and a financial contribution. However, there is no mechanism before me, such as an obligation under section 106 of the Town and Country Planning Act 1990 (the Act), to secure the delivery of the affordable housing or to ensure its retention as such in perpetuity.
20. The deadline for the receipt of any required planning obligations was set out in the appeal start letter. The Procedural Guide: Planning appeals – England also sets out the expectations for appellants regarding the submission of planning obligations during the appeal process.
21. I am not satisfied that the requirement could be secured by a planning condition. The Planning Practice Guidance (the PPG) sets out that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate other than in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk. There is no clear evidence to suggest that such exceptional circumstances would apply here. Furthermore, the PPG also sets out that no payment of money can be positively required by condition.
22. There is no evidence before me to indicate that an affordable housing contribution is not required. Therefore, in the absence of a legal agreement to

secure the required affordable housing, the proposal would be contrary to Policy HG3 of the Local Plan.

Other Matters

23. The proposal would contribute to the supply of housing, in line with the government's objective of significantly boosting the supply of homes set out in the National Planning Policy Framework. The Council's 2022 Housing Supplementary Planning Document sets out that Hambleton has a very low proportion of bungalows within its existing stock and that the Council is keen for developers to include more two-bedroom bungalows in their schemes to address this short coming. The fact that the proposal would comprise bungalows weighs positively in its favour. However, these other matters do not alter or outweigh my conclusion on the acceptability of the proposal with regard to affordable housing.

Conclusion

24. I have found that the proposal would be acceptable in terms of its effect on the character and appearance of the area. However, the lack of an obligation under section 106 of the Act to secure the required affordable housing makes the proposal unacceptable.

25. Consequently, the proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR