



Appeal Decision

Site visit made on 4 January 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2024

Appeal Ref: APP/U2750/W/23/3325291

3 Starling Hall, Stockton Road, South Kilvington, North Yorkshire YO7 2NB

- 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 Saltbox17 Ltd against the decision of North Yorkshire Council.
 - The application Ref 23/00574/FUL, dated 8 March 2023, was refused by notice dated 4 May 2023.
 - The development proposed is a new build detached 3-bedroom dwelling with garden and parking space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2023 Hambleton District Council merged with a number of other Councils to form a new Unitary Authority of North Yorkshire Council. This appeal decision however refers to the name of the Council shown on the decision notice, which is the subject of the appeal, that being North Yorkshire Council. Development plans for the merged Councils remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced.
3. On 20 December 2023 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework was accompanied by a written ministerial statement (WMS). Having regard to the main issues in this appeal, it has not been necessary to invite submissions from the parties on the revisions that have been made to the Framework.

Main Issues

4. The main issues are 1) the effect of the proposed development on the character and appearance of the area, 2) the effect of the proposed development on the living conditions of occupants of surrounding residential properties, 3) whether or not the proposed development would provide acceptable living conditions for future occupants, and 4) whether or not the development is required to provide biodiversity net gain, and if so, whether this is achieved or achievable.

Reasons

Character and appearance

5. The appeal site is located within the village of South Kilvington. It comprises land to the side of Starling Hall which is a terrace of three two-storey properties. South Kilvington is a predominantly linear settlement along Stockton Road, however development does extend outwards from the main road, most notably at Church Farm, Beck Lane and Upsall Road. There are also a number of properties located behind the main road.
6. Although there were none present at the time of my site visit, the evidence sets out that the appeal site previously contained a number of outbuildings. The site also has a defined curtilage that is commensurate with the surrounding built environment, as opposed to forming part of the open countryside beyond the appeal site. From my observations and the submitted evidence, the site would constitute previously developed land. The Council comment that the land is understood to have been used for outbuildings, storage, parking and turning for the cottages to the west.
7. The Council consider the site as being adjacent to the built form of a secondary village for the purposes of Policy HG5. Given the situation I have outlined above, I consider that the site is within the built form of the settlement, and therefore housing is supported where the site is not protected under various designations. It is not therefore necessary for there to be a sequential approach to site selection in this case.
8. The proposed dwelling would be detached from the existing terrace. However, the separation would be relatively small and would not be to such an extent where the dwelling would be perceived as visually isolated or significantly separated from the existing terrace. It would be of a similar size and scale to the existing dwellings and would broadly follow the same building line.
9. The development would not extend any further back from the main road than the existing built form of the settlement, including the nearby Mossways and Glebe Farm. Although the dwelling would be visible from a relatively short section of Stockton Road, it would not be of any greater prominence than the existing properties.
10. Therefore, although the development would extend slightly further back from Stockton Road, which encapsulates the historic linear form of the settlement, it is not to such a degree that it causes harm to the character and appearance of the area having regard to the overall size, scale and siting of the development and the make-up of the surrounding built environment, which includes buildings which extend back from Stockton Road.
11. The proposed development would therefore not cause harm to the character and appearance of the area. It would comply with Policies HG5, E1 and E7 of the Hambleton Local Plan (2022) which require, amongst other things, that development responds positively to its context and respects and contributes positively to local character, identity and distinctiveness in terms of form, scale, height, visual appearance and visual relationships.
12. Even if I shared the Council's view that the development would be adjacent to the built form of the settlement, having regard to criterion e) I find that it would have no detrimental impact on the character and appearance of the village, surrounding area and countryside, nor would it result in the loss of countryside that makes a significant contribution to the character or setting of that part of the village.

Living conditions - occupants of surrounding residential properties

13. The proposed dwelling would be sited to the south of dwellings known as Cappaleigh and Beechwood. These broadly sit perpendicular to the siting of the proposed dwelling. The evidence sets out that there are four windows in the north elevation of the proposed dwelling. Two of these are bathroom/WC and would be fitted with obscured glazing. One is to the ground floor and would not lead to any direct overlooking.
14. The remaining window would be to a first-floor bedroom. Due to the level of separation that would be maintained and the positioning of the surrounding properties, there would not be harm caused to the living conditions of these properties with regard to privacy. An element of overlooking of the rear gardens would be permissible, however this is not uncommon in residential areas and in this case it would not cause unacceptable harm.
15. In terms of the impact of the proposed development on amenity space provision the Council outline it is understood the site was used for outbuildings, storage, parking and turning for the cottages to the west. Such factors would suggest that the land was not valued private amenity space. Regardless, I observed on my site visit that the existing dwellings have good sized private outdoor amenity space that would be retained following the development.
16. I therefore find that the proposed development would not result in an unacceptable impact on the living conditions of the occupants of surrounding residential properties in terms of privacy and amenity space provision. It would comply with Policy E2 of the Hambleton Local Plan (2022) which requires, amongst other things, that development proposals maintain a high standard of amenity for existing occupants and users of neighbouring land and buildings, including in relation to privacy and the provision of private external amenity space.

Living conditions – future occupants

17. The proposed development would create a 3-bedroom dwelling. A dwelling of this size would be most likely to be aimed at family occupation for whom a garden of sufficient size would be of greatest need with a requirement for outdoor play, recreation and socialising.
18. In terms of the amenity space that is proposed, this comprises a small, grassed area to the front of the property. Having regard to its overall size, shape and siting to the front of the property, it is not considered to provide acceptable living conditions for the number of occupants for a dwelling of the proposed size. When compared to the level of amenity space for the adjacent dwellings, the provision would be significantly deficient and inadequate. Its siting at the front of the property would also afford it limited privacy and would further highlight its inadequacy. The provision of high-level boundary treatment to overcome this concern would have potentially harmful implications in terms of character and appearance and creating an overbearing impact and sense of enclosure for future occupants.
19. The appellant suggests that the paved area surrounding the property would contribute to the provision of amenity space. Due to its depth, its use would be limited and not appropriate for a family sized dwelling.

20. The Council's evidence sets out that the rear single bedroom does not meet the requirements of the National Described Space Standards (NDSS) and it would be contrary to the requirement of Policy HG2(g), which expects all housing development to comply with the NDSS. For this reason, the Council deemed that the proposed property was a 2-bedroom dwelling.
21. I have, however, considered the proposed development as applied for and as shown in the submitted plans and evidence, that being a three-bedroom dwelling. In this regard, the failure to comply with the requirements of Policy HG2(g) provides an additional reason to dismiss the appeal, on the grounds of living conditions for future occupants. Were the proposed development to have been for a 2-bedroom dwelling, compliant with the NDSS, this may have resulted in a different finding in terms of the provision of private amenity space, the reason being that it would be unlikely to constitute a family-sized dwelling.
22. Therefore, having regard to the provision of private amenity space and room sizes, the proposed development would provide unacceptable living conditions for future occupants. It would be contrary to Policies E2 and HG2 of the Hambleton Local Plan (2022) which require, amongst other things, that adequate and convenient provision of private external amenity space is made, and that all homes meet the NDSS.

Biodiversity Net Gain

23. Policy E3 of the Hambleton Local Plan states that all development will be expected to demonstrate the delivery of a net gain for biodiversity. The appellant has referred to the national transition period of small sites being extended to April 2024 and therefore considers the site would be exempt from biodiversity net gain requirements.
24. I have assumed the appellant's comments are in relation to the forthcoming requirement of the Environment Act 2021 for developers to provide quantified evidence of at least a 10% net gain in biodiversity prior to the discharge of a pre-commencement condition that secures the biodiversity gain objective. The appellant is correct that small development sites will not need to meet the requirement until April 2024.
25. However, the requirement of Policy E3 is separate to that contained in the Environment Act. As it relates to 'all development' the proposed development is covered by the requirement.
26. The appeal site appeared to be of very low biodiversity value. There is the requirement, and indeed the opportunity, to ensure that the development enhances the biodiversity value of the site resulting in a net gain. These could be secured through planting of trees, hedges and shrubs which have a high biodiversity value, and by incorporating features such as bird and bat boxes into the fabric of the building. Although there are no details submitted, it is not uncommon for details of such enhancements to be secured by planning condition.
27. To this end, the Council have recommended that were I to allow the appeal and grant planning permission, a condition should be imposed requiring details of biodiversity enhancements. I have not taken this to mean that the Council considers the matter resolved, as their reason for refusal stands and has been

defended. However, in this case, given the existing situation, I consider that it would be appropriate, reasonable, and necessary that such details could be secured by planning condition were the appeal to be allowed.

28. As a result, it follows that subject to the imposition of an appropriately worded planning condition, were the appeal to have been allowed, the proposed development would comply with the requirement of Policy E3 that developments deliver a net gain for biodiversity.

Conclusion

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
30. The proposed development would result in a minor increase in the Council's overall housing number. It would be within a sustainable location and would also bring a small number of additional residents to the area who would contribute to the local economy. I give these factors moderate weight in favour of the development.
31. However, the failure to provide satisfactory living conditions for future occupants attracts significant weight that outweighs the benefits associated with the proposed development.
32. The proposed development would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.
33. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR