



Appeal Decision

Site visit made on 16 November 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/E2734/W/23/3329091

Ashdown Lodge, Minskip Road, Boroughbridge, North Yorkshire YO51 9HY

- 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 John Moran and Sons (Grimsby) Ltd against the decision of Harrogate Borough Council.
 - The application Ref. 22/03577/OUT, dated 13 September 2022, was refused by notice dated 9 March 2023.
 - The development proposed is outline application for 5 dwellings.
-

Decision

1. The appeal is allowed, and outline planning permission is granted for outline application for 5 dwellings at Ashdown Lodge, Minskip Road, Boroughbridge, North Yorkshire YO51 9HY in accordance with the terms of the application, Ref. 22/03577/OUT, dated 13 September 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. Planning permission for the proposal was refused by Harrogate Borough Council, which at the time was the Local Planning Authority (LPA) for the area. On 1 April 2023 North Yorkshire Council was created and is now the LPA for the area previously covered by Harrogate Borough Council. In my Decision I do not differentiate between the two Councils, given their respective functions as LPA.
3. The Government published a revised version of the National Planning Policy Framework (the Framework) in December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters in dispute between the main parties in this case have not been materially altered. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.
4. The proposal is in outline but seeks permission for the means of access. All other matters are reserved for later consideration. The plan shows how dwellings could be laid out on the site, and illustrative elevations have been provided. However, in reaching my decision, I have considered only the principle of development and matters associated with the means of access.

Main Issues

5. The main issues are:
 - whether the appeal site is an appropriate location for new residential development; and

- whether the proposal makes adequate provision for affordable housing.

Reasons

Location of development

6. The proposal comprises a scheme of housing on land largely within the gardens of Ashdown Lodge, a detached single storey dwelling with rooms in the roof space. Policy GS3 of the Harrogate District Local Plan 2014–2035 (March 2020) (the LP) provides support, subject to limitations, for development within settlements identified through LP Policy GS2, which includes Minskip and Boroughbridge. LP Policy GS2 indicates that places not identified in the settlement hierarchy are considered to be part of the wider countryside where development will only be appropriate if permitted by other planning policies. Further, Policy GS3 confirms that, outside development limits for the defined settlements, new development will only be supported where expressly permitted by other policies of the LP, or a neighbourhood plan or national planning policy. There is no dispute that the appeal site lies outside any defined development limits.
7. LP Policy GS3 makes provision for circumstances where the Council is unable to demonstrate a 5-year housing land supply. At such times, proposals outside development limits would need to be considered having regard to the presumption in favour of sustainable development as defined in the Framework, and the further criteria set out in LP Policy GS3. The Council has confirmed it has more than a 5-year housing land supply, currently said to be a 7.7-year supply. This is not disputed and accordingly the proposal does not need to be considered in the context of paragraph 11 d) of the Framework or the criteria in the development plan which are relevant when the Council cannot demonstrate a 5-year supply of housing land.
8. Notwithstanding the acknowledged location of the site outside defined development limits, and the Council's ability to demonstrate a 5-year supply of housing land, I am mindful that the Framework also recognises the Government's objective of significantly boosting the supply of homes, and in doing so, decisions should promote an effective use of land in meeting the need for homes and they should promote and support the development of under-utilised land. Further, in seeking to meet the objectives of national planning policy, the presence of a 5-year supply of land for housing should not be taken as establishing an upper limit.
9. The appeal site includes extensive residential gardens serving a modestly sized dwelling, and is surrounded by development on all sides, primarily housing of varying age and the Ashdown Park residential park home site located immediately to the west. The site is connected by made footways providing safe pedestrian access to services and facilities in Boroughbridge, including the large Morrison's supermarket which is within walking distance. The site is within a relatively small, but clearly identifiable built-up area where the proposed development would have no discernible adverse impact on the character and appearance of the surrounding countryside, and the proposal would assimilate satisfactorily within this built-up area without significant adverse effects in respect of its scale and nature.
10. However, the site lies beyond defined development limits and, as such, the proposal would conflict with LP Policy GS3, it would not be expressly permitted

by other policies in the development plan, and the Council can demonstrate more than a 5-year housing land supply. Whilst I acknowledge this conflict with the development plan, there are material considerations as noted above that weigh significantly in favour of the proposal.

Affordable housing

11. The Council's requirements regarding the provision of affordable housing associated with development proposals is set out at LP Policy HS2. The proposal does not meet any of the numeric trigger points relating to either the provision of affordable housing on site or the need for financial contributions towards off-site provision set out in that policy. However, LP Policy HS2 also makes provision to refuse development proposals where it appears that a large site has been deliberately sub-divided into smaller development parcels in order to avoid affordable housing requirements. The Council's second reason for refusal relies on this provision.
12. The supporting text to Policy HS2¹ requires that the size of a development site should not be artificially reduced to reduce or eliminate the affordable housing requirement, and it explains this concept further, including by reference to examples which include reference to sub-division of sites. The Council refers to two other sites on which planning permission for housing has been granted² and, by reference to previous ownership, seeks to link at least one of those sites to the current appeal site. However, I have not seen evidence that clearly demonstrates the full extent or precise location of the larger site which the Council claim has been sub-divided. Further, I am mindful of the appellant's evidence in respect of their ownership of various parcels of land, including the time of acquisition of the appeal site.
13. The appeal site appeared to me to be distinctly separate from those other nearby parcels of land referred to by the Council and on which residential development has now taken place. Specifically, the appeal site comprises a detached dwelling and its substantial garden which is physically separated from those other parcels of land by a wide access road, and the appeal site is mostly screened by tall evergreen hedging which, given its height and density, appears to have been in place for several years and provides a discernible distinct edge around the plot. I have seen little in the evidence before me that demonstrates any physical or functional links between the appeal site and other nearby land. In noting these matters, and the information provided by the Council, I find that overall, I have very limited evidence to substantiate the Council's claim that the appeal site appears to form part of a deliberately sub-divided site.
14. The proposal comprises fewer than six dwellings. As such, the need for a financial contribution towards affordable housing associated with development in designated rural areas required through LP Policy HS2 is not triggered. From the information provided to me, I am not satisfied that the appeal site forms part of a larger site that has been deliberately sub-divided into smaller development parcels in order to avoid the requirements of LP Policy HS2. Accordingly, the proposal would not conflict with development plan requirements in respect of the provision of affordable housing set out in LP Policy HS2.

¹ Paragraph 5.24 of the LP.

² Sites referred to as R.C.1 and R.C.2 in the Council's evidence.

Other Matters

15. The Council has drawn my attention to other appeal decisions³ where housing development has been proposed outside development limits. I have considered the evidence provided by the main parties on each of these decisions. The case at Ripley was considered by the Inspector as a proposal for the creation of an isolated home in the countryside in the terms expressed in the Framework, and this differs significantly from the case before me. The remaining examples at Bishop Monkton, Dacre and Kirkby Malzeard involved single dwelling proposals where the appeal sites were not surrounded by development on all sides, as is the case with the proposal before me. Consequently, although I have taken them into account, none of these other cases have had a significant bearing on my decision.
16. A significant number of interested parties, including local residents and the Boroughbridge Town Council have expressed a wide range of concerns including, but not limited to the following: character and appearance; overdevelopment; highway safety; infrastructure capacity; living conditions, including loss of light and privacy; the removal of vegetation; and the effects on fauna and flora locally, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above. Further, given that the proposal is in outline with approval sought only for the means of access, details regarding the appearance, landscaping, layout and scale will be considered by the Council at a later date. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on the matters raised by interested parties.
17. Concerns have also been expressed by neighbouring residents about the potential use of a lane off Minskip Road situated between Sunholme and The Gables to gain access to the appeal site by builders, future occupiers and delivery vehicles. However, the proposal shows access to the site taken from the existing relatively wide drive that serves Ashdown Park. Whilst I acknowledge the concerns of the neighbours, the proposal demonstrates a satisfactory means of access to the appeal site which does not involve the use of that lane. I can therefore afford no significant weight to these concerns.

Conditions

18. I have had regard to the conditions suggested by the Council, and to the comments made by the appellant on some of those conditions, and I have considered these having regard to the provisions of the Framework and the Planning Practice Guidance. While I have deleted some of the suggested conditions for reasons given below, and I have modified others in the interests of precision and certainty, the changes made would not prejudice the interests of any party.
19. The standard conditions relating to the submission of reserved matters and the period for commencement are necessary in the interests of certainty, as is a condition defining the plan approved through this appeal which shows the extent of the site and the means of access thereto.

³ APP/E2734/W/21/3275123 (Ripley); APP/E2734/W/21/3283483 (Bishop Monkton); APP/E2734/W/21/3284640 (Dacre); and APP/E2734/W/21/3262519 (Kirkby Malzeard)

20. A condition requiring details of refuse storage areas for each dwelling and a condition to secure the implementation of a scheme for the protection of existing trees and hedges are necessary in the interests of the character and appearance of the area and the living conditions of neighbours and future occupiers. A condition requiring an acoustic report, and the implementation and retention of measures to limit the exposure of future occupiers to unacceptable noise levels is necessary to protect the living conditions of future occupiers.
21. Conditions limiting working hours and the submission of, and adherence to a Construction Method Statement are necessary to protect neighbours' living conditions. A condition securing appropriate drainage from the site is necessary to prevent any increase in the risk of flooding and to prevent pollution. The condition I have imposed in this respect is simplified from that suggested by the Council, but it allows adequate control to be exercised on this matter.
22. Conditions controlling the removal of woody vegetation during the bird nesting season, and the provision and maintenance of bird nesting boxes and bat boxes is necessary to support and protect species and biodiversity.
23. A condition requiring the elimination of Himalayan balsam is necessary as a pre-commencement condition in order to prevent the spread of an invasive non-native species, the seeds of which may be spread with contaminated soil by construction plant and vehicles.
24. The Council suggest conditions that describe its expectations concerning the height of the proposed dwellings, the required space standards, landscaping, and sustainable design requirements. However, while I note the appellant's acceptance in respect of the suggested height limitation, the Council has control over each of these aspects through its consideration of the Reserved Matters. Furthermore, these are mostly matters covered by relevant development plan policies, including Policies CC4 and HS5 of the LP, which would be engaged in the determination of any subsequent Reserved Matters application. Accordingly, I have not imposed the suggested conditions in these respects since they would not meet the test of necessity.
25. It would also not be necessary to impose a condition concerning electric vehicle infrastructure since this matter is addressed through the Building Regulations.

Planning Balance

26. The proposal would conflict with LP Policy GS3 which seeks to direct development to locations within defined development limits in a range of settlements and thereby limit housing development in the countryside. The development plan was adopted in 2020 and it would have been examined and found to be sound. The approach taken in the development plan is consistent with the Framework in respect of managing housing development.
27. However, the appeal site is surrounded by development on all sides and the scale, extent and character of surrounding development gives the site and the area within which it sits a generally urban, primarily residential character. While there is open countryside to the west beyond the group of buildings of which Ashdown Lodge forms a part, the appeal site does not appear as an encroachment into the countryside, and it is noticeably separated from the countryside by other development. As a result, the character of the site relates

more closely to the adjacent built development on all sides than to the open countryside further to the west.

28. I recognise that the proposal would conflict with the Council's development plan strategy for the location of housing in the countryside. However, given the particular circumstances in this case, including the proximity of existing development surrounding the appeal site, the proposal would not harm the character and appearance of the countryside and would therefore not conflict with this particular aim of the development plan. I therefore attach moderate weight to the conflict with LP Policy GS3 in this respect.
29. The scheme would be well located in terms of accessibility to services and facilities, particularly in Boroughbridge where those facilities are in reasonable walking distance via hard-surfaced footways. I attribute this matter significant weight in favour of the scheme.
30. Whilst the Council can demonstrate in excess of a 5-year housing supply, I am also mindful of the Government's objective of significantly boosting the supply of homes and that a 5-year housing supply is not an upper limit. Accordingly, whilst relatively modest in scale, the provision of five additional dwellings weighs moderately in favour of the scheme.
31. Notwithstanding the location of the appeal site beyond defined development limits, these material considerations weigh sufficiently in favour of the proposal to warrant a decision other than in accordance with the development plan. Furthermore, for the reasons I have set out, there is no affordable housing requirement placed upon the proposal by the development plan.

Conclusion

32. For the above reasons, having regard to the development plan as a whole, the approach in the Framework and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

David English

INSPECTOR

SCHEDULE OF CONDITIONS

1) Approval of the details of the appearance, landscaping, layout and scale (hereafter called "the Reserved Matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

2) An application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than the expiration of three years from the date of this permission and the development shall be begun no later than the expiration of two years from the date of approval of the last of the Reserved Matters to be approved.

3) In respect of the means of access, the development hereby permitted shall be carried out in accordance with the following approved plan:

Site Location & Block Plan as Proposed Drawing No LO-01 Revision A

4) The dwellings hereby permitted shall not be occupied until refuse storage areas have been constructed in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The approved scheme shall be retained thereafter.

5) No site clearance, preparatory work or development shall take place until a scheme for the protection of the existing trees and hedges on the site (hereafter called "the retained trees and hedges"), and appropriate working methods in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and hedges shall be carried out as approved.

6) No site clearance, preparatory work or development shall take place until an acoustic report (hereafter called "the acoustic report") has been prepared and submitted to the local planning authority by a suitably qualified competent person in accordance with a methodology (hereafter called "the methodology") that shall first have been agreed in writing by the local planning authority. Recommendations in the acoustic report regarding measures necessary in the design of the dwellings hereby permitted to limit the exposure of future occupiers to noise to those levels that shall first be approved through the methodology shall be implemented prior to the occupation of each of the dwellings and retained thereafter.

7) Demolition or construction works shall take place only between 08:00 and 18:00 Mondays to Friday, 08:00 and 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

8) No development shall take place, including any works of demolition, until a Construction Method Statement (hereafter called "the Statement") has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoardings;
- e) wheel washing facilities;

- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- h) the methods for controlling noise and vibration.

The approved Statement shall be adhered to throughout the construction period for the development.

9) No development shall take place until details of site drainage works for the disposal of surface and foul water from the development have been submitted to and approved in writing by the local planning authority. The approved details shall be carried out before the dwellings hereby permitted are first occupied and the works shall thereafter be maintained.

10) No site clearance, preparatory work or development shall take place until a scheme for the elimination of Himalayan balsam from the site (hereafter called "the scheme") has been submitted to and approved in writing by the local planning authority. Thereafter, the scheme shall be carried out as approved prior to the commencement of site clearance, preparatory work or development.

11) The removal of woody vegetation must not be undertaken between March and August inclusively, unless a pre-commencement check by a suitably qualified and experienced ecologist demonstrates in writing to the local planning authority that no actively nesting birds would be disturbed by such works.

12) Prior to the first occupation of the dwellings hereby approved, a scheme for the provision on the site of at least two integrated bat boxes and two bird nesting boxes shall be submitted to and approved in writing by the local planning authority. The bat boxes and bird nesting boxes shall be installed as approved and thereafter maintained.

END OF SCHEDULE.