



Appeal Decision

Site visit made on 16 January 2024

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/U2750/W/23/3327741

Land East of Limestone Grove, Burniston, Scarborough, North Yorkshire YO13 0DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Simon Jenkins against the decision of Scarborough Borough Council.
 - The application Ref is 22/01359/FL.
 - The development proposed is the erection of two detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2023 Scarborough Borough 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 Scarborough Borough 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. The Government published a revised version of the National Planning Policy Framework (Framework) on 19 December 2023. Whilst I have had regard to the revised Framework, the issues most relevant to this appeal remain unaffected by the revisions. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that such a course of action would disadvantage no party. For correctness, I have used the 2023 Framework paragraph references.
4. In the Decision Notice the Council gives two reasons for refusal regarding character and appearance separately referring to effects on openness and the design. I have combined these for conciseness.

Main Issues

5. The main issues are:
 - whether the proposed development would constitute a suitable location for housing having regard to local and national policy;
 - the effect of the proposal on the character and appearance of the open countryside and surrounding area; and

- the effect of the proposal on trees and local ecology.

Reasons

Location

6. The appeal site is an area of land located at the end of Limestone Grove. The land consists of a mix of boundary fencing, a rear garden, small size buildings (stable and office) with some hardstanding, a granular parking area and a meadow. It is bounded typically by the rear/side gardens of properties on Limestone Road and Limestone Grove and established tree belts to the Applegrove Country Park development and the land that extends northwards.
7. The proposal would consist of two detached dwellings with associated garages, parking and gardens.
8. Policy SH1 of the Scarborough Borough Local Plan (2017) (LP) details the settlement hierarchy and defines all areas outside the development limits of settlements as countryside. The appellant agrees that the appeal site is located outside the development limit of Burniston as shown on the LP policies map. Nevertheless, it is argued that due to adjacent and onsite developments, the appeal site does not have an open countryside character, and this results in special circumstances where departure from the LP is supported.
9. However, while the appeal site has been partly developed, this is small in scale and extent, and it does not appear overly residential in use. When viewed in the context of its grass meadow, the site has a reasonably open and pleasant setting which is significantly less built up than the surrounding developments. Even with the proximity of the adjacent residential and Applegrove Country Park developments, the mix of tree belts, fencing, walling and planting boundary treatments provide clear physical and visual separation. While these developments do, to a large degree enclose the appeal site from the further surrounding countryside, its overall character is still more akin to the countryside rather than that of a development/residential form. I therefore see no special circumstances for a departure from the LP.
10. To protect, maintain and where possible enhance the character of the open countryside, Policy ENV6 of the LP sets out that new development will be limited to those for which a countryside location is essential. Little substantive evidence that the proposal would meet any of the essential development criteria listed in this policy is provided.
11. The appellant advises that the proposal constitutes sustainable development by, amongst other matters, being an efficient use of the land, in a sustainable location and supporting local services. Policy SD1 of the LP reflects the presumption in favour of sustainable development contained in the Framework. However, this policy is subject to the proposed development according to the policies in the LP. It also states that where relevant policies are out of date then the proposed development should be granted permission unless material considerations indicate otherwise. Little evidence has been provided to show that the policies in the LP relevant to the proposal are out of date, or inconsistent with the Framework. Therefore, while I note the sustainable development benefits, they do not justify a departure from the LP.
12. In support of the proposal, the appellant draws my attention to three housing sites in the vicinity of the appeal site which demonstrates that housing growth

in Burniston is occurring. However, irrespective of the character of these sites, they are all located within the development limit of Burniston and two of them are also allocated as housing developments in the LP. They are therefore not directly comparable and do not support the proposal.

13. In conclusion of this matter, the proposal is contrary to the requirements of Policies SD1, SH1 and ENV6 of the LP.
14. The proposal would also be contrary to Paragraph 83 of the Framework which seeks housing to be located where it will enhance or maintain the vitality of rural communities.

Character and appearance

15. The two proposed houses, associated garages and parking would be a large form of development that would substantially dominate the appeal site and significantly diminish its openness.
16. Notwithstanding that the widths of the proposed house plots may be similar to the existing plots, and the appellant considers the overall density to be appropriate for the context, the proposed houses would largely take up the full width of their plots. This would result in most of the proposed garages and parking being provided in a large central courtyard between the front of the proposed houses. While most of the proposed garages and parking in the courtyard would face the existing development, the proposed single detached garage turns its back on it. The need and layout design of the courtyard illustrates how constrained the proposed houses would be and how the proposal would be detached from the existing development. Even with the building separations and the proposed gardens and landscaping, the proposal represents poor design and would appear overdeveloped in the space it sits in.
17. Furthermore, even though it may offer a contemporary development, rather than adding interest, it would be significantly at odds with the surrounding traditional linear housing pattern that appears more spacious in their plots and has less imposing garage and parking arrangements.
18. With respect to the proposed houses, other than concerns about their size within the plots, the Council do not raise any specific issues in terms of general style, form or the materials used. I see little reason to question this. However, this does not outweigh the adverse effects regarding openness, overdevelopment and the loss of the local character that I have found.
19. The proposal would harm the character and appearance of the area and be contrary to Policies DEC1, ENV6 and ENV7 of the LP and the guidance set out in the Council's Residential Design Supplementary Planning Document dated February 2022. These, amongst other matters, seek new development to be to a good design, protect, maintain and where possible enhance the open countryside, reflect the local environment and create an individual sense of place with a distinctive character.
20. It would also be contrary to Section 12 of the Framework which seeks, amongst other matters, for new developments to be visually attractive as a result of good architecture, layout and appropriate and effective landscaping and be sympathetic to local character, including the surrounding built environment and landscape setting.

Trees and local ecology

21. Trees adjacent to the proposal contribute to the attractiveness of the area. It is advised that the proposal would require some of the existing trees located on the boundary with the Applegrove Country Park development to be pruned and thinned. The Tree and Countryside Officer questions the proposal's effect on the root protection area of the trees. The appellant states that the works would be carried out in a sensitive manner so as not to impact the visual amenity provided by the trees. However, little details on the trees affected and what works would be completed are provided.
22. During my visit, I observed many of the trees sitting on a raised bank. Most of the trees are tall and mature with branch canopies that overhang the appeal site to varying degrees. While the raised bank may reduce the extent of the main roots on the appeal site, confirmation of this has not been provided. The proposal is located very close to the bank and details of any proposed excavation or retaining works in this area have not been provided. Neither has the extent of the potential thinning of the trees. Consequently, I cannot be certain that the existing trees would not be unacceptably affected by the proposal.
23. Further to the Council's concerns about the trees, it also advises that there is a known Great Crested Newt (GCN) population within the village. GCNs are protected by law and their presence is a material consideration in a proposal where there is a reasonable likelihood of a protected species being present and affected. In such circumstances, a survey should be submitted to enable the risk to the species to be assessed and where necessary mitigated. However, no ecological survey or assessment has been provided.
24. The appellant refers to a site to the east of Limestone Grove (LPA Ref: 20/00394/OL) which was supported by a habitat survey and preliminary ecological assessment. This assessment did identify a pond near the site which had a known GCN population and did consider development effects on GCNs. The Council accepted the assessment and concluded that no undue harm to species or their habitats would occur. It is advised that the appeal site is further away from the identified pond and suggested that this shows the development would have a less likely effect on GCNs. However, while this may be the case, the details of the assessment have not been provided. As the site assessed is not directly adjacent to the appeal site, I cannot be sure that it sufficiently covers the area. Furthermore, the assessment also appears to be a number of years old, and maybe out of date.
25. It is important that the presence or otherwise of protected species and the extent to which they may be affected by the proposed development is fully established before planning permission is granted. Without this, the proposed development could lead to unacceptable harm. The appellant considers that a planning condition could control an ecological assessment. However, due to the uncertainties I have highlighted, I am not satisfied that a condition could be imposed that would meet the tests set out in the Framework with respect to being enforceable, precise and reasonable.
26. Consequently, there is insufficient information to conclude whether the proposal would have an adverse effect on trees and local ecology. The proposal would be contrary to Policies ENV5 and DEC1 of the LP. These seek, amongst other matters, for new development to respond positively and seek

opportunities for the enhancement of species and habitats and ensure any associated landscaping scheme have been developed to enhance both the natural and built environment.

Other Matters

27. The parties agree that the Council can demonstrate a 5-year deliverable supply of housing land. The appellant contends that the proposal would be sustainable development which would boost the housing supply in accordance with the Framework and provide a quick win in delivering this aim.
28. The proposal would result in the creation of two residential dwellings which could be completed reasonably quickly and would provide social and economic benefits. However, the housing benefits would be small and, as the appellant acknowledges, the proposal would only modestly boost housing supply. As such I do not consider these modest benefits would outweigh the significant adverse effects I have found.
29. In support of the proposal, the appellant refers to two planning appeals¹ which were allowed and where the proposed housing was outside the settlement boundary and the Council could demonstrate a 5-year or more supply of deliverable housing land. However, in both cases, the number of houses proposed, and the benefits provided such as affordable housing and contribution to community facilities were significantly greater than those that the proposal would provide. Furthermore, in the Biggleswade Road appeal the main parties agreed that the settlement boundaries were inconsistent with the Framework which is not the case in this appeal. Similarly, in the Broden Stables appeal, the proposed housing was found to have an informal, softer and rural feel which is not the case for this proposal. Overall, the appeal examples are not directly comparable to the proposal and do not change my view regarding the adverse effects that I have found.
30. I note the appellant refers to a lack of balance in the decision-making process between the pre-application comments and the planning application's refusal. However, as noted by the appellant, pre-application advice is not binding. In any event, this appeal has considered the proposal on its planning merits and it has been found to be unacceptable for the reasons set out above.

Conclusion

31. The proposed development would be contrary to the development plan and there are no other considerations, including the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should be dismissed.

J Symmons

INSPECTOR

¹ APP/P0240/W/17/3176444 64 'Biggleswade Road, Potton' and APP/N1730/W/17/3185513 'Broden Stables, Redlands Lane, Crondall, Farnham'.