



Appeal Decision

Site visit made on 7 November 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2024

Appeal Ref: APP/G2713/W/23/3317426

Land off Stainthorpe Row, South Otterington

- 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 Mr C Parvin against the decision of Hambleton District Council.
 - The application Ref 22/02364/FUL, dated 11 October 2022, was refused by notice dated 22 December 2022.
 - The development proposed is erection of 3no. residential dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 3no. residential dwellings at Land off Stainthorpe Row, South Otterington in accordance with the terms of the application, Ref 22/02364/FUL, dated 11 October 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. For clarity, Hambleton District Council became part of the new Unitary Authority, North Yorkshire Council on 1 April 2023. The planning policies of the former Hambleton District Council are still applicable and so this change does not affect my determination of this appeal.
3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023 and is a material consideration to this appeal. Having considered the revisions to the Framework, as well as the principles of natural justice, together with the nature of the determining issues in this appeal it is clear to me that there are no material changes in the revised Framework relevant to the substance of this appeal. I have consulted with the main parties and their views are consistent with mine.

Main Issue

4. The main issue is whether or not the proposal would make adequate provision for affordable housing.

Reasons

5. The appeal site comprises an area of open land to the south of South Otterington and is described as OS Field 7434. It adjoins open land to the east and south and a new development of houses to the north.
6. The Council sets out in Local Plan¹ Policy HG3 its aim to deliver affordable housing in order to meet identified requirements. This is generally consistent with the Framework. For all developments for new market housing, a provision

¹ Hambleton District Council – Hambleton Local Plan, Adopted February 2022.

of 30% affordable housing is required unless the development falls below a stated threshold. Within a parish defined as a designated rural area, the threshold is 4 units or fewer and in other locations it is 9 units or fewer. Although this site is on the edge of the built-up settlement, there is no dispute between the main parties that this site falls within a designated rural area where the threshold is 4 units. The proposed development of 3 dwelling would therefore fall below this threshold.

7. However, Policy HG3 indicates that planning permission will be refused where it appears that a larger site has been sub-divided into smaller parcels in order to avoid developer contributions for affordable housing. The Council's SPD² also seeks to avoid piecemeal development that does not make appropriate provision for affordable housing. In this case, the Council consider that the site has been artificially sub-divided and so conflicts with Policy HG3. This view takes into account an adjacent site to the north where 5 houses have been built.
8. In order to determine whether the two sites should be considered as part of a larger whole for the purposes of affordable housing, my attention has been drawn to the High Court Judgement in respect of *Westminster City Council v FSS and Brandlord*³. The judgement upheld the approach of an Inspector in considering three ways in which a conclusion might be reached on the matter. (1) whether the sites are in single ownership; (2) whether they constitute a single site for planning purposes; and (3) whether the proposal can be deemed to be a single development. I also note the appellant's reference to the judgement in the case of *New Dawn Homes Ltd*⁴ regarding the application of this approach.
9. In terms of the first point, ownership, the northern site and the appeal site were originally under the ownership of the appellant who explains that both sites formed part of an agricultural holding. However, the northern site was sold following approval of outline planning permission (Ref: 20/02354/OUT) in December 2020. Reserved Matters were subsequently approved (Ref 21/00718/REM) in 2021 and the development subsequently built out.
10. Outline planning application was sought on the northern site by another party (NYC Estates) although the appellant still seems to have been the owner of the land at that time. The site was then sold and subsequent reserved matters approval granted to another company (ZCS Property Limited). The northern site was subsequently developed independently from any involvement with the appellant. Therefore, although there was initially an ownership connection between the two parcels of land, this ceased at some stage during the outline and reserved matters stages and the northern site has now been developed independently of the appeal site.
11. With regard to the second point, the two sites are physically independent of each other. The five dwellings have their own access points and the nearest house adjoining the appeal site has a detached garage sited at right angles to it which effectively prevents any through road between the two developments, short of the demolition of the garage. The five detached houses on the

² Hambleton District Council – Housing Supplementary Planning Document, Adopted June 2022.

³ R (oao City of Westminster) vs First Secretary of State and Brandlord Limited ([2002] EWHC 2725 (Admin)).

⁴ New Dawn Homes Limited vs Secretary of State for Communities and Local Government and Tewksbury Borough Council [2016] EWHC 3314 (Admin).

northern site are of a completely different design to the scheme proposed on the appeal site, which would be bungalows. At the moment the appeal site is an open field and at this stage, the northern site and the appeal site do not form part of a single site. Even when developed, the two site would appear different and whilst adjacent to each other therefore, they would not appear as part of a single development.

12. Turning to the third point, there is no dispute that the appeal site formed part of the outline or reserved matters applications for the development of the northern site and I have not been provided with any evidence that planning permission exists on the appeal site for residential development. The appellant also points out that outline planning permission for the northern site was approved under the development plan in force at that time and the accompanying Hambleton Interim Planning Policy Guidance (IPG). The latter included a focus on small scale developments (up to five dwellings). No evidence has been submitted to suggest that a separate planning application was sought for the appeal site at the time when the previous development plan and IPG was in force.
13. Moreover, in the event that planning permission is granted on the appeal site, it would be developed independently from the northern site. As stated, the northern site has been completed and the appeal site is still a field and whilst developments can be carried out in phases, in the light of the above, the appeal site and the northern site do not form part of the same development.
14. Whilst I appreciate the concerns expressed by the Council about the timings of the land sale, from the evidence submitted, this does not sufficiently demonstrate that the land has been artificially sub-divided.
15. Consequently, I conclude that whilst forming part of the appellants original ownership and therefore there was a historical link between the two sites, I am not persuaded that it has been demonstrated that the appeal proposal has been deliberately held back from developing a larger site to avoid the provision of affordable housing. Accordingly, I conclude that the proposal does not trigger the requirement for affordable housing under policy HG3 or the Framework.

Other Matters

16. Concerns have been expressed by third parties about the safety of the access due to its proximity to a bend in the road. However, I am satisfied from the evidence submitted that, subject to conditions relating to the access and visibility splays, the proposal would not harm highway or pedestrian safety.

Conditions

17. In addition to the standard time limit condition and a condition requiring the development to be carried out in accordance with the approved plans, the Council has suggested conditions which I have considered in the light of the Framework and Planning Practice Guidance.
18. Conditions relating to the material to be used in the construction of the dwellings and the boundary treatments are necessary in order to ensure a satisfactory appearance. Details of existing ground levels and finished floor levels are necessary as none have been submitted and it is necessary to ensure that appearance of the finished development is appropriate in its setting.

19. A condition relating to landscaping is necessary in order to ensure that the public areas of the site are satisfactory in appearance. The suggested condition also includes a requirement for biodiversity net gain. However, the Council suggest a 10% net gain which the appellant disputes as whilst the development plan policy requires a biodiversity net gain, it does not require a 10% net gain and the national/legal requirement for this is not yet in place. I agree that the requirement for 10% net gain has yet to come in force for this scale of development, I have therefore redrafted the condition accordingly.
20. Conditions ensuring the provision of access to the site, visibility splays, parking and manoeuvring are necessary in the interests of highway and pedestrian safety. However, the Council's suggested condition refers to standard E50 but no details or explanation of this are included in the appeal documents, therefore, I have omitted it from the condition. Also, a condition, as suggested by the Council, requiring off-site works shown on the submitted plans is not necessary as this is included in other conditions and off-site works will also involve separate agreements with the appropriate highway authority.
21. A construction management plan is necessary in order to minimise any adverse effects during the construction period. It is also reasonable and necessary that a condition is imposed relating to any potential contamination on the site in order to mitigate any potential harm that could arise. A condition ensuring that the site is adequately drained in accordance with the submitted details is necessary. However, the Council refer to a document entitled Flood Risk & Drainage Strategy but the submitted document (by the same author and date) is entitled Flood Risk Summary & Drainage Strategy. On this basis, I have taken the document's reference from that submitted with the appeal.
22. I have amended the suggested wording in some cases in accordance with the Framework and the Planning Practice Guidance.

Conclusion

23. For the reasons given above the appeal should be allowed.

J D Clark

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - *Drawing Nos: -*
 - 3963-PD-01; 3963-PD-02; 3963-PD-05; 3963-PD-10; 3963-PD-11; and 3963-PD-12.
- 3) No above ground construction work shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details / samples.
- 4) No above ground construction shall commence until details relating to boundary walls, fences and other means of enclosure for all parts of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 5) 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 levels for the development and the relationship to the 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.
- 6) Prior to the commencement of development, a landscaping and biodiversity net gain scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide (a) a landscaping scheme including details of any changes in surfacing materials and any planting schemes shall show the retention of any significant existing landscape features and shall provide (b) details to show how a net gain biodiversity will be achieved using the DEFRA biodiversity metric 3.1 (or the latest published version) and include a programme of works and subsequent maintenance arrangements. The development shall thereafter be carried out in accordance with the approved scheme.
- 7) The development must 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 and/or footway must be constructed in accordance with the approved drawing reference 3363-PD-02.

- The final surfacing of any private access must not contain any loose material that is capable of being drawn on to the existing public highway.

All works must accord with the approved details.

- 8) There must be no access or egress by any vehicle between the highway and the application site until visibility splays of 2.4 metres x 43 metres have been provided. The visibility splays must be kept clear of all obstructions above 1.05 metres and thereafter retained for their intended purpose at all times.
- 9) No part of the development must be brought into use until the access, parking, manoeuvring and turning areas for all users have been constructed in accordance with the approved drawing reference 3963-PD-02. Once created these areas must be maintained clear of any obstructions and retained for their intended purpose at all times.
- 10) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan must include, but not be limited to, arrangements for the following in respect of each of the phases of works:
 - details of any temporary construction access to the site including measures for removal following completion of construction works;
 - wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
 - the parking of contractors' vehicles;
 - areas for 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.

The approved Construction Method Plan shall be adhered to throughout the construction period for the development.

- 11) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 12) The development shall be carried out in accordance with the details shown on the submitted document entitled Flood Risk Summary & Drainage Strategy prepared by Andrew Moseley Associates, dated May 2022, unless otherwise agreed in writing with the Local Planning Authority.