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## Appeal Decision

Site visit made on 11 March 2024

**by P. D. Biggers BSc Hons MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11.04.2024**

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**Appeal Ref: APP/N2739/W/23/3324994**

**Sunnydene Farm, York Road, Cliffe, Selby, North Yorks YO8 6NU.**

- 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 and Mrs William and Alison Mulrooney against the decision of Selby District Council.
  - The application Ref 2022/0417/OUT dated 3 October 2022, was refused by notice dated 21 December 2022.
  - The development proposed is demolition of former coal yard building and outline erection of two houses and garages served from private drive.
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### Decision

1. The appeal is allowed and outline planning permission is granted for demolition of former coal yard building and outline erection of two houses and garages served from private drive at Sunnydene Farm, York Road, Cliffe, Selby, North Yorks YO8 6NU in accordance with the terms of the application, Ref 2022/0417/OUT dated 3 October 2022 and subject to the conditions at in the schedule below.

### Preliminary Matters

2. The application for the proposed development is in outline with all matters reserved other than access which is to be determined in full. However, the application was also accompanied by an indicative layout referring to some of these matters which I have treated as being for illustrative purposes only.
3. In the period since the appeal was submitted the Government has published a revised version of the National Planning Policy Framework. None of the changes are relevant to this appeal but I have used the paragraph referencing from the new Framework in my decision below.

### Main Issues

4. The main issues in this case are:
  - Whether the appeal site is an appropriate site for housing on the edge of Cliffe given the development plan policies.
  - The effect of the proposed development on the character and appearance of the countryside and surroundings on York Road.
  - The effect of the proposed development on the protected willow tree on the southern boundary of the site.

### Reasons

5. The appeal site is located on the east side of York Road and to the rear of the

frontage development which is a detached, two storey house to a traditional design partially fronting York Road and having a residential annexe running along the Fenwick Lane frontage. The appeal site is partially occupied by a large Dutch barn type building formerly used as part of the coal yard business that operated on the site. Access to the site would be taken between Kilravrock House and Sunnysdene Farm and would be a shared drive initially before splitting into two separate access ways.

6. The site is separated from undeveloped countryside and open farmland to the east by the replacement coal yard. Fenwick lane provides access to the current coal yard.

*Whether the site is an appropriate site for housing*

7. Cliffe is identified as a secondary village in Policy SP2 of the *Selby District Core Strategy* (SDCS) where limited amounts of residential development may be absorbed within development limits. However, the bulk of the appeal site, other than its access, is outside the development limits for the settlement. That being the case housing development is restricted to that which would meet rural affordable housing need under Policy SP10 or other special circumstances. The proposal would be for general open market housing which is not permissible under the policy.
8. It has been put to me that, although technically the site is outside the development limits, the location and character of the site is such that it forms part of the village context rather than open countryside. The appellant has also pointed out that in other parts of the village permission has been granted for development in the backland and in depth and therefore in terms of consistency the appeal proposal should be allowed. Whilst I acknowledge that for example development at Badgers Way extends beyond the development limits it is not clear what the particular circumstances were to justify these developments and therefore I will determine the appeal proposal on its own merits.
9. The spatial strategy is designed to minimise house building outside of development limits and strictly in terms of Policy SP2 the development of the site therefore would be contrary to policy and housing on the site would not be appropriate. Although it has been put to me that circumstances have changed and the development limits of Cliffe no longer reflect the character and extent of the settlement, the appropriate means by which development limits are changed are through changes to the development plan. The Council is in the process of preparing a new local plan for North Yorkshire but it is not currently far advanced. In the absence of any review of development limits being completed there would need to be clear grounds in terms of other material considerations to warrant an exception to the Policy, a matter I consider further below.

*Character and Appearance*

10. I have been referred to the fact that the pattern of development in Cliffe is a linear settlement with very little development in depth. I accept that there is some residential development in depth at the southern end of the village, as the appellant points out, but at the north end along York Road housing is more typically single depth development.
11. However, around the appeal site there is a greater degree of development in depth with the large Dutch barn forming part of the coal yard business and substantial

development behind frontage properties north of Fenwick Lane which although not housing reads as part of the village. Moreover, the new coal yard site to the east also has buildings within it. The appeal site is therefore contained by other development beyond it. In this context the proposed replacement of the Dutch barn with two dwellings would not constitute any significantly greater scale and mass than that currently on the site and furthermore would be contained within the current built form of the village.

12. When viewed from the open field beyond the current coalyard to the east, the buildings on the coalyard would in part screen the new houses and they would appear as part of the village form. Standing on the site during the site inspection and visualising the proposed development it was clear that the proposal would not extend development into open countryside. I am not therefore persuaded by reason of refusal No 2 that there would be visual intrusion into the open countryside setting to Cliffe, provided that the design at the reserved matters stage would result in a modest scale of development that would not exceed the scale and mass of Sunnyside Farm.
13. As the design and appearance of the development is a reserved matter there would appear to be no reason why an appropriately scaled and detailed design could not be achieved. A sensitive design could preserve the intrinsic character and beauty of the countryside beyond, be a sensitive replacement to the existing Dutch barn and reflect the surrounding traditional forms of development on York Road. In this way the development would not be in conflict with Policy ENV1 of the *Selby District Local Plan* (SDLP) setting out the requirement for a good quality of development to be achieved or SDCS Policies SP18 and SP19 requiring development to protect and enhance the environment and achieve a high quality of design respectively.
14. In drawing the discussion on character and appearance to a conclusion, for all the reasons above and in the context of what is an already developed site and hardstanding with substantial built form, I am not persuaded that the impact on the character and appearance of the surrounding area, including the open countryside to the east, would be significant. Accordingly, it would not conflict with Policies SP18 and ENV1.
15. In any event, the status of the application as an outline only establishes the principle of the development and I would expect the reserved matters application to bring forward a high quality of design that respected the setting and built form as required by Policy SP19. For example, this could be achieved by designing modestly-sized dwellings, restricting their height and maximising new landscaping and retaining and protecting existing trees.

*The effect of the Development on the Protected Willow.*

16. On the south side of the site close to its southern boundary there is a mature willow, now the subject of a tree preservation order. Concern has been raised by the Council that the development would be likely to have an adverse impact on the tree and that insufficient information has been provided to confirm that this would not be the case.
17. Notwithstanding the fact that the application is in outline, the illustrative layout plan confirms that two dwellings could be accommodated on the site retaining a separation distance of 15 metres from the tree. This distance is well beyond the spread of the canopy which normally indicates the extent of the root plate. In any

event, both the existing Dutch barn and hardstanding are much closer to the tree and yet the tree at the time of the site visit appeared in good health. It would be perfectly possible to design the access drive to be constructed in permeable materials so as to have no impact on the root plate which would be an improvement on the existing hardstanding and to impose a condition to require construction to be carried out in such a way as to protect the tree. Accordingly, I am not satisfied that the third reason for refusal is justified and the concern of the Council would not therefore be a valid reason on which to dismiss the appeal.

18. With appropriate conditions in respect of the relationship to the tree the proposal would be compliant with SDCS Policies SP15 and SP18 and SDLP ENV1.

#### *Other Matters*

19. I acknowledge from the documents before me that the Council in this case can demonstrate 6.1 years supply of housing land and that the latest available Housing Delivery Test published in January 2022 does demonstrate that housing delivery is well ahead of target. It has been put to me that the proposed housing is not therefore needed and the policies concerned in the delivery of housing can therefore be considered up to date and the 'tilted balance' set out in paragraph 11 would not apply.
20. Notwithstanding this, the Framework supports the delivery of sustainable housing development and the requirements are not a cap but a minimum to be met with the aim of supporting the Government's objective to significantly boost supply. The Framework encourages the development of small sites which can usually be quickly built out and encourages the redevelopment of previously developed sites such as this and their efficient use, as does SDCS Policy SP19 in seeking the best, most efficient use of land. The appeal site is such a site.
21. I note that the Council attaches only limited weight to the redevelopment of previously developed land stating that this only carries weight where it complies with sustainability objectives. This is not fully consistent with the Framework at paragraph 124 which attaches substantial weight to the reuse of previously developed land. Although this is in the context of 'within settlements', the appeal site is at least, in part, within the settlement limits and immediately adjacent to them. Moreover, the previously developed site is within the form and grain of the village and development could be achieved without extending beyond it and without compromising local distinctiveness, character and form - the test in Policy SP19. It is in a reasonably sustainable location where Cliffe has basic services including a primary school, shops, public house, public transport services, village hall, playing fields, etc within a reasonable walking or cycling distance from the site.
22. The Council's decision notice also raised a further reason for refusal in respect of there being a lack of clarity about ownership of the site. I am satisfied based on the appeal documents and having viewed the site that there is no issue in this regard but, in any event, even if there were, it would simply mean that the development could not be implemented. Land disputes are a private civil matter and do not prevent permission being granted if the appeal were allowed.

#### **Conclusion and Conditions**

23. In reaching my decision I have had regard to the matters before me.  
Notwithstanding the fact that demonstrably the site is largely outside the

development limits for Cliffe and therefore this proposed development would be contrary to the spatial strategy in SDCS Policy SP2 I am satisfied that, for the reasons above, there would be no substantive harm from development.

24. I acknowledge that the absence of harm would be a requirement of any development and therefore of itself would be neutral weighed in the balance with the conflict with the spatial strategy.
25. However, the appeal proposal would see the redevelopment of a vacant previously developed site bringing it into effective use for housing and the removal of a built form and hardstanding which is not in keeping with the character and appearance of the village edge. Moreover, there would be a modest benefit in terms of housing supply which in a small way reduces the need for greenfield development elsewhere. I am satisfied that these are material considerations of sufficient weight to outweigh the policy objection under Policy SP2 and justify in this case an exception to it.
26. Subject to careful design at the reserved matters stage there is no reason why the proposed development of two dwellings should have any significant impact on the character and appearance of the surrounding area, the current built form of Cliffe or the open countryside to the east. The appeal should therefore be allowed and outline planning permission (with access not reserved) granted for two dwellings on the appeal site subject to conditions.
27. The Council suggested a number of conditions. I have considered these in the light of the advice in the Framework and *Planning Practice Guidance*. In addition to the standard conditions attached to outline permissions regarding submission of reserved matters, although not proposed by the Council, a condition requiring development to be carried out in accordance with the submitted plans is necessary in the interest of certainty. This is required as access is not a reserved matter and the access arrangements are approved as part of this permission.
28. In order to prevent surface water flooding it is necessary to ensure the satisfactory drainage of surface water from the site, through the effective operation of sustainable drainage features over the lifetime of the development. The Council proposes a controlling condition to ensure the development accords with drainage policies.
29. Notwithstanding the fact that access is not a reserved matter, the detail relating to access in the plans is minimal. In order to ensure appropriate on-site facilities in the interests of highway safety and the general amenity of the development a condition needs to be added.
30. In view of the site's previous use as a coalyard the suite of conditions relating to ensuring there is no risk from contamination needs to be attached.
31. Finally, although not proposed by the Council in view of the concern over the protected willow tree it is necessary to attach a condition ensuring its protection during the construction and development process. As this was clearly a matter of concern, such a condition would not come as a surprise to the appellant nor be deemed unreasonable. In the circumstances I do not therefore consider it necessary to consult on this additional condition to those proposed.

*P. D. Biggers*

INSPECTOR

## **Schedule A Conditions**

- 1) Applications for the approval of the reserved matters referred to in Condition No.2 herein shall be made within a period of three years from the grant of this outline permission and the development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) Approval of the details of the (a) appearance, (b) landscaping, (c) layout, and (d) scale (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) The development hereby permitted shall be carried out in accordance with the submitted documents and the following approved plans: MUL 1; MUL2; and MUL3 (Access proposals only).
- 4) No development approved by this permission shall be commenced until the Local Planning Authority, in consultation with Ouse & Derwent Internal Drainage Board, has approved a scheme for the disposal of surface water and foul sewage. Any such scheme shall be implemented to the reasonable satisfaction of the Local Planning Authority before the development is brought into use.  
The following criteria should be considered for the disposal of surface water:
  - The suitability of soakaways, as a means of surface water disposal, should first be ascertained in accordance with BRE Digest 365 or other approved methodology.
  - If soakaways are not feasible, then the Board may consider a proposal to discharge surface water to a watercourse (directly or indirectly).
  - For the redevelopment of a brownfield site, the applicant should first establish the extent of any existing discharge to that watercourse.
  - Peak run-off from a brownfield site should be attenuated to 70% of any existing discharge rate (existing rate taken as 140 litres per second per hectare or the established rate whichever is the lesser for the connected impermeable area).
  - Discharge from "greenfield sites" taken as 1.4 litres per second per hectare (1:1 year storm).
  - Storage volume should accommodate a 1:30 year event with no surface flooding and no overland discharge off the site in a 1:100 year event. A 30% allowance for climate change should be included in all calculations. A range of durations should be used to establish the worst-case scenario.
- 5) There must be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) at Sunnysdene Farm, York Road, Cliffe until full details of the following have been submitted to and approved in writing by the Local Planning Authority:
  - vehicular, cycle, and pedestrian accesses;
  - vehicular and cycle parking;
  - vehicular turning arrangements including measures to enable vehicles to enter and leave the site in a forward gear, and;



No part of the development must be brought into use until the vehicle access, parking, manoeuvring and turning areas at Sunnysdene Farm, York Road, Cliffe have been constructed in accordance with the details approved in writing by the Local Planning Authority. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

- 6) Prior to development (excluding demolition), a site investigation and risk assessment must be undertaken to assess the nature, scale and extent of any land contamination and the potential risks to human health, groundwater, surface water and other receptors. A written report of the findings must be produced and is subject to approval in writing by the Local Planning Authority. It is strongly recommended that the report is prepared by a suitably qualified and competent person.
- 7) Where remediation works are shown to be necessary, development (excluding demolition) shall not commence until a detailed remediation strategy has been submitted to and approved by the Local Planning Authority. The remediation strategy must demonstrate how the site will be made suitable for its intended use and must include proposals for the verification of the remediation works. It is strongly recommended that the strategy is prepared by a suitably qualified and competent person.
- 8) Prior to first occupation or use, remediation works should be carried out in accordance with the approved remediation strategy. On completion of those works, a verification report (which demonstrates the effectiveness of the remediation carried out) must be submitted to and approved by the Local Planning Authority. It is strongly recommended that the report is prepared by a suitably qualified and competent person.
- 9) In the event that unexpected land contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and, if remediation is necessary, a remediation strategy must be prepared, which is subject to approval in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation strategy, a verification report must be submitted to and approved by the Local Planning Authority. It is strongly recommended that all reports are prepared by a suitably qualified and competent person.
- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained willow tree on the southern boundary and the appropriate working methods (the Arboricultural Method Statement) 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 willow tree shall be carried out as approved and the tree protected thereafter.