



Appeal Decision

Site visit made on 24 April 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2024

Appeal Ref: APP/U2750/W/24/3338329

Conifer House, Lumley Lane, Kirkby Fleetham DL7 0SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Luettkke against the decision of North Yorkshire Council.
 - The application Ref is ZB23/01775/OUT.
 - The development proposed is a detached bungalow with new vehicular entrance from highway.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application is made in outline with all matters reserved save for access and layout. I have determined the appeal on this basis.

Main Issues

3. The main issues are 1) the effect of the proposed development on the character and appearance of the area, and 2) 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

4. The appeal site is located on Lumley Lane to the west of the village of Kirkby Fleetham. The site currently forms part of the garden of Conifer House which is a two-storey detached dwelling. Although there are sporadic residential properties in close proximity, and the site is a short distance from the village, it is very much part of the open countryside where the emphasis is on open land of a rural character which gives the area a pleasant sense of openness and spaciousness.
5. The proposed development would result in a detached bungalow being located to the side of Conifer House in what is currently its garden, which relates more to the surrounding countryside than to the main built-up part of the nearby settlement. Although there are some consented schemes closer to the village, the proposed development would contribute to erode the sense of spaciousness and openness that currently exists in this open countryside location. It would result in a greater intensification of use and have an urbanising effect beyond what is the evident settlement limit and built form of Kirkby Fleetham. The

presence of some hedging and trees at the appeal site would not overcome the harm that would be caused.

6. As highlighted in the evidence, and as I observed on my site visit, there is no connecting footpath with the village. Although the appellant has referred to a wide grass verge, this does not run the whole length to the village and would be unsuitable for all users. The route is also not lit, and I cannot be certain that it would remain as mown grass in perpetuity. This absence of a good quality route highlights the separation and disconnection that exists with the village.
7. The appellant has referred to a number of planning consents for residential development. None of these however extend as far from the settlement as the appeal site. One of those referred to is within the settlement, and one is adjacent to the settlement boundary, although the Council state that the latter has expired. The other site is for the replacement of buildings. It is also pertinent that some of these applications were considered against a development plan that has since been replaced. Furthermore, I do not have full details of the applications, and this limits the weight that I can give to them. In any event the differences between those applications and the current appeal are such that they do not overcome the harm I have identified.
8. The proposed development would therefore cause harm to the character and appearance of the area. It would be contrary to Policy S5 of the Hambleton Local Plan (2022) which requires, amongst other things, that development in the countryside does not harm the character and appearance of the area whilst recognising the intrinsic beauty, character and distinctiveness of the countryside.

Biodiversity Net Gain

9. Policy E3 of the Hambleton Local Plan states that all development will be expected to demonstrate the delivery of a net gain for biodiversity.
10. The timeline of the application is such that the development would be exempt from biodiversity net gain requirements as set out in 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.
11. The requirement of Policy E3 is, however, separate to that contained in the Environment Act. As it relates to 'all development' the proposed development is covered by the requirement of Policy E3.
12. The appeal site, being located in the open countryside where there are several potential habitats and landscape features, appeared to be of a moderate 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. This 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. The appellant has also briefly set out some examples of how they would provide enhancements, including the use of a sedum roof. Although there are no details submitted, it is not uncommon for details of such enhancements to be secured by planning condition.

13. 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 how the development would achieve biodiversity net gain. 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, 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.
14. 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.

Other Matters

15. I acknowledge the personal circumstances put forward by the appellant in terms of their wish to reside in the area and to be close to family members in order to provide care and support.
16. Such personal circumstances however seldom carry significant weight in the decision-making process that is primarily concerned with land use planning matters. Whilst I give them limited to moderate weight in favour of the appeal, they do not outweigh the harm I have identified.
17. The absence of objections to the planning application is a neutral factor in the balance.

Planning Balance and Conclusion

18. The Government's objective as set out in the Framework is to support sustainable housing growth. The proposed development would result in a slight increase in the Council's overall housing number and would also bring a small number of additional residents to the area who would contribute to the local economy. There are also personal reasons for seeking to undertake the development. Collectively, I give these matters moderate weight in favour of the proposed development.
19. However, the harm that would be caused to the character and appearance of the area, and the conflict with the development plan, attracts significant weight that outweighs the benefits associated with the proposed development.
20. The proposed development would therefore conflict with the development plan and there are no identified other considerations that outweigh this conflict.
21. 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