



Appeal Decision

Site visit made on 4 October 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2024

Appeal Ref: APP/U2750/W/24/3344107

Land to the north of Back Lane, Tollerton (at the junction of Moorlands Lane) YO61 1PZ

- 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 Mr Ian Reynolds of Stephensons Estate Agents against the decision of North Yorkshire Council.
 - The application Ref is 23/00144/FUL.
 - The development proposed is the erection of 3 dwellings and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 dwellings and associated works at land to the north of Back Lane, Tollerton (at the junction of Moorlands Lane) YO61 1PZ in accordance with the terms of the application, Ref 23/00144/FUL, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Ian Reynolds of Stephensons Estate Agents against North Yorkshire Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are 1) whether or not, having regard to development plan policy, the proposed development would provide an appropriate mix of housing, 2) whether or not, having regard to development plan policy, the proposed development is required to provide affordable housing, 3) the effect of the proposed development on the character and appearance of the settlement, and 4) the effect of the temporary construction access on highway safety.

Reasons

Housing mix

4. The proposed development involves the creation of three detached dwellings. There would be one 2-bedroom property, one 3-bedroom property and one 4-bedroom property.
5. Policy HG2 of the Hambleton Local Plan (2022) seeks to deliver the right types of homes in terms of size, tenure and type in order to meet the district's housing requirement in terms of affordability, adaptability and an ageing

population. The Council consider that the proposed development does not meet the requirements of the policy having regard to local need.

6. Criteria f. and g. of Policy HG2 outline the situations where housing development will be supported. In criterion f. this is where a range of house types and sizes are provided, that reflects and responds to the existing and future needs of the district's households as identified in the Strategic Housing Market Assessment (SHMA) or successor documents, having had regard to evidence of local housing need, market conditions and the ability of the site to accommodate a mix of housing. In g. this is where all homes meet the National Described Space Standards (NDSS).
7. Having regard to the size of the development in the context of housing delivery across the whole district, it represents a minor contribution of a total of three dwellings. Even at this low number, the development provides a range of house types and sizes. The supporting text to the policy identifies that the Council will seek to achieve a mix of predominantly one, two, and three bedroom homes. These are identified in the SHMA as being of greatest need.
8. In the proposed development, two of the three properties would be of the size where the Council have identified greatest need. They would also be bungalows, even though one property has one of the three bedrooms in the roof space. Bungalows, as outlined in the SPD¹ represent a very low proportion of housing within the existing stock. One of these would be a two-bedroom bungalow where there is a shortage identified, and the Council is keen for developers to include these in their schemes.
9. The SPD sets out a target range of housing² to be delivered. Given the number of dwellings proposed, the housing mix provided on such a small development could only ever be 33.3%, 66.6% or 100% of any one particular size and as a result it would not be possible to comply with the target. Furthermore, as the evidence outlines, the targets are guidance only.
10. A four-bedroom property is proposed to be provided. The SHMA identifies that there is a low need for such a size, not because there is not a demand, but due to the fact that the stock already contains a significant number of larger homes. In the appeal development, the provision of one four-bedroom unit offers the potential for family sized accommodation that would free-up a smaller unit elsewhere. Therefore, even though it would not be in strict accordance with the target mix outlined in the SPD I do not consider that the provision of a four-bedroom dwelling at the appeal site would undermine the Council's approach to delivering an appropriate range of housing.
11. In terms of criterion g. all the proposed dwellings would meet the nationally described space standard. Whilst I have considered the requirement for affordable housing elsewhere, the Council draw a link between this part of the policy and affordability, however no such link is made in the policy with an emphasis on bedroom size as opposed to floor area.
12. I therefore find that the proposed development would provide a satisfactory housing mix and would comply with the requirement of Policy HG2 in terms of ensuring the provision of a range of house types and sizes, that reflects the existing and future needs of the district's households.

¹ Housing Supplementary Planning Document (2022)

² Table 3.1 Mix of housing for market and affordable housing

Affordable housing

13. Policy HG3 of the local plan outlines the affordable housing requirements. As a designated rural area, the Council outline how under this policy, developments of 5 units or more require that 30% of the units are affordable housing. The policy states that planning permission will be refused for proposals where it appears that a larger site has been sub-divided into smaller parcels in order to avoid developer contributions for affordable housing.
14. In this case, the Council consider that when taken with an adjacent development of three dwellings, it appears that a larger site has been sub-divided into smaller parcels in order to avoid developer contributions for affordable housing. The main reason for this stance is due to both sites utilising the same access from the highway.
15. The development in question has been completed and I observed on my site visit that some units are occupied. I have been referred to an appeal decision³ where the matter was considered in the context of the judgement in *Westminster City Council v First Secretary of State and Brandlford Limited*. In that case, the Court upheld the approach of an Inspector in considering whether or not a site had been artificially sub-divided. These were 1) whether the sites are in single ownership; 2) whether they constitute a single site for planning purposes; and 3) whether the proposals can be deemed to be a single development.
16. The evidence shows that the appeal site and the adjoining site are in separate ownerships. The appeal site being owned by the current owner since at least 2001 and the adjacent site being owned by the owner at the time of the planning application on that land, since at least 1990. This weighs against the suggestion that the site has been artificially sub-divided.
17. In terms of whether they constitute a single site for planning purposes it is clear that the adjacent site has been built out in its own right, regardless of any future events at the appeal site. The evidence supplied also points towards an historic delineation between the appeal site and the adjacent site. Again, these factors weigh against the suggestion that the site has been artificially sub-divided.
18. Access is proposed to be taken via the adjacent site, however it is not wholly uncommon for one development to be accessed from another and it is pertinent that in this case, the proposed access arrangements follow from the Council having identified concerns with a previously proposed independent access for plot 3. It would appear therefore to be reasonable to suggest that the shared access, which forms the key aspect of the Council's argument, is the only access the Council would favourably consider. Given that other access arrangements would be physically possible as the site is bounded on two sides by highway, notwithstanding their planning merits, the proposed access does not suggest that this is a single development seeking to avoid affordable housing contributions.
19. I acknowledge the similarity in design and scale between the completed development and the appeal scheme. I find that this is more a reflection on

³ APP/G2713/W/23/3317426

the development seeking to assimilate with the character and appearance of the surrounding area than being part of a single development.

20. I therefore find that it does not appear that the site has been sub-divided into smaller parcels in order to avoid developer contributions for affordable housing. As a result, the requirements of Policy HG3 of the Hambleton Local Plan (2022) are not applicable to the proposed development.

Character and appearance

21. The appeal site is within the village of Tollerton which is identified as a secondary village within the Easingwold sub area. Although it extends from the existing built form of the settlement, it is contained by Moorlands Lane to the north, where the landscape becomes markedly more rural in character.
22. The appeal site is located on Back Lane which is formed completely of residential properties on both sides between Station Road and Moorlands Lane, save for the appeal site itself. It is a very pleasant residential street with an emphasis on residential properties of a rural character in spacious plots with plentiful landscape features.
23. The proposed development would be on the same side of Back Lane, and adjacent to, a recently constructed development of three detached bungalows. It would be opposite existing residential properties on Back Lane and would complete the frontage of the street.
24. Policy HG5 of the local plan requires that all proposals will individually or cumulatively; c. represent incremental growth of the village that is commensurate to its size, scale, role and function; d. not result in the loss of open space that is important to the historic form and layout of the village; and e. have no detrimental impact on the character and appearance of the village, surrounding area and countryside or result in the loss of countryside that makes a significant contribution to the character or setting of that part of the village.
25. The Council's reason for refusal on this matter does not specify how it relates to the proposed development nor does it actually state that any harm would be caused. It is not clear why the Council consider the cumulative impact should include the adjacent development. Despite having granted planning permission for the adjacent development, the Council state that it has impacts on the character and appearance of this part of the village and the proposed dwellings would be seen in the context of the nearby built development.
26. Although the site does not contain notable built development, given the amount of surrounding development, and that it would be curtailed by Moorlands Lane, it does not represent a harmful erosion of the countryside. The development would maintain the spacious form and rural character which exists in the street and would be partially screened by existing hedges and landscaping. I do not share the Council's suggestion that the site erodes the rural leafy entrance to the village. It is not a prominent site in the settlement and few people travelling to or from the village would encounter it. The development represents a form and design commensurate with the existing built form and rounds off this part of the settlement, with a natural stopping point being formed by Moorlands Lane.

27. In terms of the wider settlement and the cumulative impacts, the proposal represents a very minor increase in the overall number of dwellings. To suggest that this particularly low number of dwellings 'tips the scales' to the extent that there is an unacceptable impact on the character and appearance of the settlement is somewhat of an exaggeration. The Council's figures suggest that there is an average growth of 2.375% per year since 2015. This equates to a small increase in the number of households in the village and I agree with the Officer that this is an acceptable level of growth for a settlement that offers a reasonable level of local facilities. Such growth, either individually or cumulatively would be commensurate to the size, scale, role and function of the village.
28. I therefore conclude that the proposed development would not cause harm to the character and appearance of the settlement. It would comply with the aims of Policy HG5 of the Hambleton Local Plan (2022) as set out above.

Highway safety

29. On the matter of highway safety, the Council's concern relates to the temporary construction access and the width of the single-track road that would be used being inadequate, resulting in conflict between heavy construction vehicles and existing vehicle traffic.
30. The temporary access would be located on Moorlands Lane which is a single-track road. Although there are no dedicated passing places the route is relatively straight so that there are good levels of visibility. I observed on my site visit that the route was not well used and therefore this would reduce the possibility of conflict. The scale of the development is also unlikely to require significant traffic movements or construction vehicles of excessive sizes such as those that would be required at larger developments. The road is already likely to be used by tractors and larger vehicles, combined with the cars of residents and other vehicles. Given that even two cars could not pass each other regardless of the proposed development, the construction traffic associated with the development would not significantly worsen the current situation.
31. Construction phases of development can inevitably bring cause some disruption, and this includes to roads surrounding the development site. Such disruption would however be temporary and would be mitigated by a Construction Management Plan which could be the subject of a condition. I acknowledge that this was also considered an appropriate means to address the construction phase by Officers in their assessment.
32. The National Planning Policy Framework (2023) (the Framework) states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. For the reasons given above and the lack of substantive evidence to the contrary, I do not consider that there would be an unacceptable or severe impact in this case.
33. I therefore find that the use of the temporary construction access would not cause demonstrable harm to highway safety. It would comply with Policy IG2 of the Hambleton Local Plan (2022) which requires, amongst other things, that developments do not compromise highway safety.

Other Matters

34. In terms of drainage a Drainage Strategy has been submitted and considered by the Council and relevant consultees. The matter of drainage or flooding did not form part of the Council's reasons for refusal of planning permission and there is no substantive evidence before me to demonstrate that the proposed development would increase the risk of flooding. Compliance with the Drainage Strategy can be secured by planning condition.
35. I note representations that were received in relation to the highway safety implications of the traffic associated with the future occupants of the development. Whilst this was not a reason for refusal of planning permission and was not raised as an objection by Highways Officers, the amount of additional traffic associated with three dwellings would be relatively low in the wider context. There is also no substantive evidence that such additional traffic would cause demonstrable harm to highway safety.
36. I also note representation refers to the fact that one of the dwellings in the adjacent development is unsold and it is considered that this represents a saturation of new housing in the area. I do not have full details of the unsold property, such as any marketing information, to give this significant weight. The Government's objective is to significantly boost the supply of homes and I do not consider that this matter would be a reason to dismiss the appeal.
37. Objection was made in relation to the impact on privacy. There is a reasonable separation from the existing dwellings to the proposed development to ensure that there would not be an unacceptable impact. Also in terms of the impact of the construction phase on the living conditions of occupants of surrounding residential properties, there would inevitably be some impact in terms of noise and disturbance associated with nearby development. Such impacts are temporary and are seldom a reason to withhold granting planning permission. This also applies to the impacts of the construction phase on cattle grazing nearby.
38. I acknowledge the concerns relating to apparent breaches of planning control on the adjacent development. This would not however be a reason to withhold granting planning permission for a separate development at a separate site, albeit adjacent and accessed via that site. Any breaches of planning control on the proposed development would be a matter for planning enforcement.
39. Reference is made to the consideration of a previous planning application and the highways considerations therein. I do not have full details of that application and I have considered this application on its individual planning merits based on the evidence before me to which there were no highways objections raised by the highways authority.
40. In terms of parking provision, no objections were raised by the highways authority. I similarly do not consider that there would be demonstrable harm to highway safety in terms of the amount of parking spaces which are proposed.
41. The fact that interested parties may wish to see alternative forms of development on the site, or that there are preferable alternative sites for this development would not be reasons to withhold granting planning permission.

42. Part of the southern side of Back Lane is located within the Tollerton Conservation Area (TCA). Although the appeal site is not within the TCA I have considered whether there would be any harm to its setting. Like the Council, having regard to the design, scale, size and layout of the development, I do not consider that there would be any harm caused to the setting of the TCA as a result of the development.
43. Any potential land contamination matters can be appropriately addressed through imposing planning conditions. There is however no substantive evidence that there is a high risk of land contamination owing to previous uses of the site.
44. Reference is made to sustainable construction of the proposed dwellings. This is not pertinent to the main issues, and I am not aware of any policy reason why the proposed development should be prevented on this basis.
45. In addition to the matters relating to character and appearance above, representations have referred to the design and style of the dwellings not following those in the surrounding area. The existing properties on Back Lane present a wide range of sizes and designs. The Council have referred to the similarity with the adjacent development, insofar as two of the properties are detached bungalows in spacious plots. The proposed development would therefore follow this arrangement for two of its plots. The additional plot would be for a two-storey dwelling, with representations referring to this being out of character. Although it would depart from the form of the other two properties in the site, it would reflect some of the other two storey properties on Back Lane. There would not be harm caused to the character and appearance of the area by this arrangement.
46. In terms of the impact on local wildlife and biodiversity, the application included the submission of a Preliminary Ecological Appraisal (PEA)⁴ and Biodiversity Net Gain (BNG) Assessment⁵. The PEA identified the site as being of low value and that the development and associated landscaping would be likely to improve that evaluation based on presumptions that the vegetated gardens will also contribute to the biodiversity net gain offered by bird and bat box installations and landscaping. The Council do not dispute the findings of either report.
47. Subject to the recommended mitigation and enhancements, which could be secured by appropriately worded planning conditions, the proposed development would not have an adverse impact on biodiversity.
48. There is no substantive evidence to suggest that either the provision of, or impact on, services and utilities would be a reason to dismiss the appeal. Such matters have technical solutions outside of the planning application stage and resisting the development on these grounds would not be justified.
49. I have also been referred to private access arrangements concerning the adjacent site. Such private agreements are typically not material land use planning considerations and whilst the Council have expressed concerns in relation to the construction phase, I share their view that the future operation

⁴ Dryad Ecology – Ref 205-01 - Back Lane - Tollerton - PEA report - 02.docx – December 2022

⁵ Dryad Ecology – Ref 205-02 - Back Lane - Tollerton - Reynolds - BNG assessment - ver4.0 - 2023-12-19 - 09.docx – December 2023

of the development would not cause demonstrable harm to highway or pedestrian safety.

Conditions

50. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans. This is in the interests of certainty.
51. I have considered the suggested conditions against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity.
52. In the interests of the character and appearance of the area, I have imposed conditions requiring the submission of details of external materials and ground levels. Details of ground levels are required to be submitted prior to the commencement of development so that such details are known from the outset.
53. In the interests of highway safety, I have imposed conditions requiring the implementation of parking and turning areas. Also in the interests of highway safety, I have imposed a condition requiring the submission of a Construction Management Plan. This is required prior to the commencement of development to ensure that such matters are agreed from the outset.
54. In the interests of public safety, conditions relating to the submission of an assessment for possible contamination and the reporting of any unexpected contamination are necessary. The Phase 2 assessment is required to be submitted prior to the commencement of development in order that any necessary remediation can be carried out. In the interests of flooding and drainage, I have imposed a condition requiring the implementation of the submitted Drainage Strategy.
55. In the interests of biodiversity, I have imposed conditions requiring the retention of all hedges and trees on the site, unless shown as being removed. This includes the protection of trees and hedgerows on land adjacent to the site. Also in the interests of biodiversity conditions requiring the implementation of the landscaping scheme, a management plan and the mitigation measures are necessary.
56. In the interests of living conditions, I have imposed conditions restricting the hours of construction and in relation to lighting. Also in the interests of living conditions for future occupants, conditions relating to glazing, ventilation and noise are necessary.

Conclusion

57. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR

Schedule of Conditions

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan, Drawing Number – P102 Rev N; Plot 1 Plans and Elevations, Drawing Number – P101 Rev D; Plot 2 Floor Plans, Drawing Number P201 Rev D; Plot 2 Elevations, Drawing Number P202 Rev B; Plot 3 Floor Plans, Drawing Number P301 Rev D; Plot 3 Elevations, Drawing Number P302 Rev E; Plot 3 Garage Plan and Elevations, Drawing Number P501 Rev A; Garage Plan and Elevations, Drawing Number P401; Site Access Plan, Drawing Number P104; Temporary Site Access Plan, Drawing Number P103 Rev A; Detailed Landscape Proposals, Drawing Number 5017/2 Rev C.
3. No above ground construction work shall be undertaken until details of the materials to be used in the construction of the external surfaces of the development have been submitted in writing to the local planning authority for approval and samples have been made available on the application site for inspection (and the local planning authority have been advised that the materials are on site) and the materials have been approved in writing by the local planning authority. The development shall thereafter be constructed of the approved materials.
4. Prior to development 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 and finished floor levels for the 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.
5. 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 P102 Rev N. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.
6. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Construction of the permitted development must be undertaken in accordance with the approved plan. The Plan must include, but not be limited to, arrangements for the following in respect of each phase of the works:
 - i) details of any temporary construction access to the site including measures for removal following completion of construction works;
 - ii) wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
 - iii) the parking of contractors' vehicles;
 - iv) measures to manage the delivery of materials and plant to the site including the routes and timings of deliveries and provision of loading/unloading areas;

- v) areas for storage of plant and materials used in constructing the development clear of the highway;
 - vi) a detailed method statement and programme for the building works; and
 - vii) contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.
7. No development shall be commenced until a Phase 2 assessment of the risks posed by contamination, carried out in line with the Environment Agency's Procedures for Land Contamination Risk Management (LCRM), has been submitted to and approved by the local planning authority.
 8. If contamination is identified during the Phase 2 assessment, prior to any development work, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be prepared and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
 9. Prior to first occupation or use, the approved remediation scheme must be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority.
 10. In the event that unexpected 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 where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.
 11. The development shall be carried out in accordance with the details shown on the submitted plan, 'Drainage Strategy' 22418 DR-C-0107 (revision P5) dated 01/12/23 prepared by Topping Engineers.
 12. All existing hedges and trees shall be retained, unless shown on the approved drawings as being removed. All trees and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site by the erection of protective fencing in accordance with the details shown within section 9.4 of the submitted Tree Survey prepared by Blue Hill dated 21 Dec 2022. Any parts of hedges or hedgerows removed without the local planning authority's consent or which die or become seriously diseased or otherwise damaged within five years following completion of the approved development, shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of

the first available planting season, with plants of such size and species and in such positions as specified by the authority.

13. No part of the development shall be used after the end of the first planting and seeding seasons following the first occupation or completion of the dwellings whichever is the sooner, unless the landscaping scheme shown on the landscaping plan numbered 5017/2C received by the local planning authority on 31.10.2023; and the Biodiversity Net Gain planting on the adjacent site has been carried out.
14. Prior to the development hereby approved coming into use, a Management Plan setting out how the landscaping and biodiversity net gain planting both on the application site and on the adjacent biodiversity net gain site shown edged pink on Figure 9.6 of the Biodiversity Net Gain Assessment dated December 2023 will be managed, including periodical review and monitoring, to ensure the specified net gain in biodiversity will be achieved for the 30 year period, has been submitted for the written approval of the local planning authority. Once approved the Management Plan must then be implemented in full.
15. The mitigation measures outlined in Section 6 of the Ecological Impact Assessment prepared by Dryad Ecology dated December 2022 shall be implemented in full, including the following:
 - The removal of the hedgerow section to be scheduled to avoid the bird breeding season, which runs from March to the end of August. If this is not possible, then a check for active nests should be carried out immediately before any works to the affected areas begin. If active nests are found, works shall be delayed until all chicks have fully fledged.
 - Site clearance to be scheduled to avoid the bird breeding season, which runs from March to the end of August. If this is not possible, then a pre-emptive survey shall be undertaken to confirm a lack of any active nests of ground-nesting species, or any active nests shall be left undamaged until they are no longer in use.
 - Measures to ensure the development is hedgehog friendly.
 - Inclusion of a bat box and bird box into each dwelling.
 - Any external lighting to emit a wavelength that is bat friendly, with lights that are downward pointing and which are on motion sensors or timers to reduce the time that the area is illuminated.
16. Construction activities which are audible beyond the site boundary, including deliveries, ground works and earth movements, shall be restricted to the following days and times: - 08:00 – 18:00 Monday to Friday - 08:00 – 13:00 Saturday - Construction shall not be undertaken on a Sunday or a public holiday.
17. No above ground construction work shall be undertaken until details of the glazing specification, including design, materials, method of opening and ventilation requirements to be incorporated into the construction of the development, shall be detailed and submitted to the local planning authority for prior approval. Thereafter, the approved details shall be implemented in full prior to the development becoming occupied and shall be permanently maintained in full accordance with the approved details.

18. Any external lighting used at the development shall be shielded to prevent glare or any threat to highway safety or detriment to amenity. All lighting fixtures shall be installed at an angle to prevent light emitting directly above the horizontal plane.
19. Development shall take place strictly in accordance with the mitigation requirements set out at paragraph 5.1.1 of the noise impact assessment received by the local planning authority on 10 January 2024 requiring any bedroom window, with either full or partial line of sight to Moorlands Lane, is fitted with an acoustic trickle ventilator as proposed in the noise mitigation proposals of the report.

----- end of conditions schedule -----