
Appeal Decision

Hearing held on 26 March 2025

Site visit made on 25 March 2025

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2025

Appeal Ref: APP/U2750/W/24/3354268

Land off Wandales Road, Burniston, Scarborough, North Yorkshire YO13 0HD

- 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 Richard Roberts Ltd against the decision of North Yorkshire Council.
 - The application Ref is ZF23/01113/OL.
 - The development proposed is the erection of 9 No. residential dwellings.
-

Decision

1. The appeal is allowed and outline planning permission is granted (with all matters reserved except access) for the erection of 9 No. residential dwellings at land off Wandales Road, Burniston, Scarborough, YO13 0HD in accordance with the terms of the application, Ref ZF23/01113/OL, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Richard Roberts Ltd against North Yorkshire Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The application is in outline. Access arrangements are included in the proposal, with matters of layout, external appearance and landscaping reserved for future determination. Accordingly, I have treated the submitted site layout plan and landscape masterplan as being indicative.
4. The original application made provision for an area of off-site open space, but this was removed from the scheme in response to concerns raised by the Council. The Council determined the application on the basis of the revised scheme, and I have done the same.

Main Issue

5. The main issue is whether affordable housing should be provided.

Reasons

6. The appeal site is an area of undeveloped land within the development limits of Burniston, as defined in the Scarborough Borough Local Plan 2017. Policy HC2 of the Plan allows for new housing development here, where it complies with other relevant policies.

7. Local Plan Policy HC3 is concerned with affordable housing. The aim of the policy is to ensure that, where appropriate, development contributes to local housing needs, as identified in the Strategic Housing Market Assessment (SHMA). The Affordable Housing Supplementary Planning Document 2022 (SPD) explains that the most recent SHMA, dated 2021, identified a high need for all types of affordable housing across all areas of the Borough, due principally to affordability of housing and shortage of supply.
8. Policy HC3 requires that affordable housing is provided in residential developments of 11 or more dwellings. This threshold is consistent with affordable housing policy in paragraph 65 of the National Planning Policy Framework (the Framework). In the Whitby, Northern and Western Parishes housing market areas (which include Burniston), Policy HC3 requires that 30% of new housing in eligible schemes is affordable.
9. The appeal proposal is for 9 homes, so is below the policy threshold for affordable housing, and the site size is less than the 0.5ha threshold set out in the SPD. As such, the scheme is not required to provide affordable housing, and does not do so. However, Policy HC3 also states that *'proposals for housing will not be permitted where the scale of the development (in terms of site area and/or number of units) is manipulated to fall below the threshold requiring provision of on-site affordable housing'*. It is the Council's case that the appeal proposal has been manipulated in this way.
10. The indicative layout shows 9 detached and semi-detached houses, with access provided from a spur off Wandales Road. At the hearing, the Council confirmed that it does not object to the quantum of development proposed. The scheme is in outline, but the indicative layout appears appropriate in this location, and I agree that the proposed density would be acceptable. The issue for the appeal, therefore, is whether the area of the site has been deliberately manipulated to avoid policy requirements for affordable housing.
11. The site is bounded on three sides by existing residential development, whilst the north-eastern boundary of the site cuts across a field. Beyond the extent of the site, the field continues, descending to the wooded Burniston Beck which runs along the edge of the village.
12. The appellant has confirmed that the site area is as defined within the Promotion Agreement entered into with the landowners. Without a re-negotiation of that agreement, which the landowners are not prepared to do, the developer is unable to extend the red line boundary.
13. A previous outline application, covering a larger area than the current appeal, was submitted on behalf of the same landowners (application ref 20/00840/OL). The application was considered acceptable by the Council, but the legal agreement was never signed, so planning permission was not granted. Although never progressed, the existence of the previous application suggests that, at the time it was submitted, there had been a willingness by the landowners to develop a larger area. This raises questions as to why there has been a change in approach.
14. Compared with the previous application, the appeal site boundary has been reduced in two areas. It was explained at the hearing that a small portion of land on the south-western edge of the site which had previously been included, forms part of the gardens of houses owned by the landowner and their family. The landowner

has indicated that they wish to retain this area for recreational use, and I have no reason to dispute their reasons for doing so.

15. The site area has also been reduced along its north-eastern edge. With no physical boundary on the ground here, a different site area could have been chosen, to provide for a greater (or lesser) quantum of development. At the hearing we explored whether policy requirements or technical constraints would prevent a larger area being developed. Matters discussed included flood risk, open space requirements and the need for part of the access road to be of adoptable standard. It was accepted by both parties that none of these factors would prevent a larger site area being developed.
16. The area and quantum of development proposed are just below the threshold for affordable housing, and a larger area could be developed. Even so, this does not necessarily indicate deliberate manipulation. The decision about what area to develop is ultimately for the landowners.
17. A signed 'Statement of Truth' has been provided to explain the landowner's position. This states that the family do not wish to develop the whole field at this time, indeed, their intention has always been to sell only what was needed to raise funds for a specific purpose. This is not unreasonable and within their gift as landowners.
18. The Statement of Truth also explains that, in submitting the previous application, the idea had been to market a portion of the site with outline permission, and then obtain reserved matters approval for that part. However, we heard at the hearing that there had been no developer interest in taking forward only part of the site, and the landowner came to realise that it would be necessary to sell the whole of the site for the development to progress. They did not wish to do that, so decided not to proceed with the scheme.
19. Such lack of developer interest in the previous proposal is perhaps a reflection of the particular nature of that scheme, which was for 16 units of older persons accommodation. It may have been easier to sell the land in parcels if a more traditional form of housing had been proposed. However, the evidence indicates that the landowners are not experienced property developers, and I have no reason to doubt that they acted in good faith on the advice that they had been given at the time.
20. In light of their previous experience, the approach taken in the Promotion Agreement is not unreasonable and would provide the landowner with more certainty and control to achieve their stated aim, in a more straightforward manner. The scheme is certainly not a blatant attempt to split the site as appeared to be the case in the linked applications for housing refused by the Council in Green Lane, Snaiton¹.
21. The proposal would allow the existing agricultural use to continue on the retained part of the site, which according to the appellant is a primary factor in determining the site area. The resultant site would be small, but the existing field is already isolated from wider agricultural land, and the farming use appears to be fairly low key. As local residents, the landowners may well have perfectly good reasons for

¹ Application refs 19/01863/FL and 19/01864/FL

keeping part of the site open, and continuing the existing arrangement with the tenant farmer.

22. In light of the above considerations, it seems to me that the landowners had valid reasons for making the choices they did. Accepting the appellant's evidence and Statement of Truth at face value, they simply wish to sell part of the site to raise funds for the purpose specified. I have no reason to doubt this. I am also mindful that, as local residents and members of the local community, their decisions may be based on a range of considerations, not all of which are purely financial.
23. The field is a single planning unit in single ownership. I note the Council's comments about disaggregation of sites, and the references to caselaw which has established criterion for considering this matter². However, in the appeal before me there is no existing permission in place, and never has been. The existence of previous applications which were never progressed does not provide clear evidence of disaggregation.
24. I acknowledge that there would be nothing to prevent a further application being submitted at any time, seeking development on the remaining area. Indeed, the indicative layout, in which the internal access road terminates at the site boundary, would allow for a continuation of built development as well as access to the agricultural land. However, the site it is not allocated and there is no policy imperative to develop the whole area. Indeed, the site forms part of a wider area identified as Natural and Semi Natural Green Space, which is subject to restrictions under Local Plan Policy HC14. Any future proposals would need to be considered on their own merits, in accordance with policy, including HC14.
25. Paragraph 6.48 of the explanatory text to Local Plan Policy HC3 deals with the issue of deliberate subdivision of sites to avoid affordable housing contributions, and may also be relevant if a scheme was submitted for the remainder of the site. This text makes clear that in such cases, proposals will be required to provide for the appropriate level of affordable homes based on the development in totality. This provides some recourse for the Council, although I accept that it is text, not policy, and the ability to secure future affordable housing provision in such circumstances is by no means guaranteed.
26. I appreciate the scale of affordable housing need, but as submitted, the scheme does not fall within the policy thresholds for affordable housing. The development would provide 9 additional dwellings, and is capable of providing a policy compliant range of house types and sizes, which would contribute to local housing needs. Even without any affordable housing, these are significant benefits.
27. In light of the above considerations, I am not persuaded that deliberate manipulation of the site area to avoid affordable housing contributions has taken place. I therefore conclude that the proposal is consistent with Local Plan Policy HC3, and affordable housing does not need to be provided.

² R (Westminster City Council) v First Secretary of State and Brandlford Limited [2003]; New Dawn Homes Ltd v SSCLG [2016] EWHC 3314 (Admin)

Other Matters

Open Space

28. The appeal site is identified in the Scarborough Green Space Audit 2014 as being within a larger area of natural and semi-natural green space. The Audit explains that such areas of green space are of benefit for wildlife conservation and biodiversity, as well as for their recreational opportunities.
29. Because of this designation, the proposal is subject to Local Plan Policy HC14, which protects open space and sports facilities, including those identified in the Audit. Part b.iii. of the Policy indicates that the redevelopment of Green Spaces will only be permitted for non-open space uses where a replacement open space can be provided in a nearby accessible location.
30. The proposal originally made provision for an area of replacement open space on the other side of Burniston Brook, but that element of the scheme was removed in light of concerns by the Police Designing Out Crime Officer and the Parks and Countryside Service. With no replacement open space proposed, the revised scheme does not comply with Policy HC14.
31. However, a significant part of the area of designated green space would remain, and whilst part of that wider area is accessible to the public, the appeal site is not. Although it has visual benefits, the site does not have any recreational value, and the submitted Preliminary Ecological Appraisal (PEA) did not identify the site itself as having particular value for wildlife either. I also note that the site was given a below average score in the Audit. Given those considerations, and taking account of the Framework objective of boosting housing supply, I concur with the Council that in this particular case, the provision of 9 market houses is sufficient to outweigh the policy conflict.

Other considerations

32. Local residents have raised a number of concerns about the proposal, including the impact of increased traffic on Wandales Road and a lack of parking for existing and future residents.
33. Wandales Road is a residential street but the proposed development of 9 houses would not generate a significant amount of additional traffic. The proposed access appears reasonable, with footways which would link into those on Wandales Road. The highways officer did not object to the scheme, subject conditions which are discussed below. I have no reason to take a different view.
34. Parking is a matter for future determination, but the indicative layout shows that the scheme is capable of providing sufficient spaces to meet the anticipated needs of future occupiers. Existing residents park along the road, and the proposal would limit the scope for parking in front of Wandales Court. However, there would only be a small loss of on-street parking spaces, and the indicative layout does show two visitor parking spaces close to the access point. There could be scope to increase the number of parking spaces in the final layout, if necessary.
35. I note comments about pressure on local infrastructure, but the development would be small in scale so any impacts modest. I am not aware of any objections to the scheme from service providers, and note that the Local Plan allows for some development in Burniston.

36. The site is close to bus stops on the High Street, with a regular service to Scarborough and settlements to the north. Future residents could access local services and facilities without needing to travel by car.
37. Detailed matters of layout and appearance would need to be considered through a reserved matters application, but the indicative layout shows that a scheme could be delivered without causing a harmful loss of privacy or overbearing impact to neighbouring occupiers.
38. The site is entirely within Flood Zone 1 so is of low risk of flooding from Burniston Beck. A drainage strategy was submitted as part of the application, which demonstrates how foul and surface water could be appropriately dealt with, including provision for an attenuation tank. Subject to further information which can be secured through a condition, I am satisfied that the scheme could be delivered without increasing the risk of flooding.
39. The submitted PEA includes recommendations aimed at protecting existing biodiversity throughout the development process, with measures for enhancements also proposed. The Council's ecologist agreed with the results and recommendations of the PEA, which can be secured by a condition. I have no reason to take a different view, and am satisfied that the proposal is capable of being acceptable in terms of ecology.

Conditions

40. In addition to standard conditions setting out timescales for implementation and the submission of reserved matters, a plans condition is needed to provide certainty.
41. A pre-commencement condition requiring the submission, approval and implementation of a Construction Method Statement is needed to safeguard the safety and living conditions of nearby residents. For completeness, I have used the more detailed list provided in the Council's suggested condition, rather than the shorter condition suggested by the appellant.
42. The Council has suggested a condition requiring details of a footway link from the point of access to provide a pedestrian link to the High Street. This information is already shown on the approved access plan, but in the interests of pedestrian safety and accessibility, a condition is needed to ensure that the pedestrian link is provided prior to first occupation. Also in the interests of highway safety, conditions are necessary requiring details of road and footpath construction works to be submitted, approved and implemented in accordance with an approved programme of delivery.
43. To safeguard the amenity of neighbouring occupiers, a condition requiring details of proposed finished floor levels to be submitted and approved is needed. I have also imposed a condition requiring additional details of surface water drainage works to be submitted, approved and implemented, to ensure that the development is safe from flooding. For similar reasons and in the interests of certainty, I have imposed a condition requiring separate systems of foul and surface water, as suggested by the appellant.
44. A condition requiring a scheme of biodiversity enhancements is required to deliver the net gain required by local and national planning policy. To safeguard existing wildlife, I also imposed a condition requiring that the recommendations contained in

the submitted PEA are carried out. For similar reasons, a condition is needed which requires approval of any scheme of external lighting, including during the construction phase.

45. To protect the environment and human health, I have included a condition requiring that any unexpected contamination found during construction is appropriately remediated.

Conclusion

46. On the balance of evidence provided, I find that manipulation to avoid affordable housing requirements has not occurred. Subject to appropriate conditions and the approval of reserved matters, the development is capable of being acceptable in all other respects. The appeal is therefore allowed.

R Morgan

INSPECTOR

List of Appearances

For the Appellant:

Matt Burrow (Preston Baker, agent)

Charlotte Nicholson (Richard Roberts, developer)

Andrew Moseley (highways consultant)

For the Council:

Richard Wood (Richard Wood Associates)

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site location plan – ref 3383-DEN-X-XX-DR-0001 Rev A
Site access plan – ref AMA/22219/SK001.
- 5) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) details of any temporary construction access to the site including measures for removal and reinstatement following completion of construction works;
 - ii) wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
 - iii) the parking of vehicles of site operatives and visitors;
 - iv) areas for the storage of plant and materials used in constructing the development, clear of the highway;
 - v) measures to manage the delivery of materials and plant to the site, including routing and timing of deliveries, and loading and unloading areas;
 - vi) measures to protect carriageway and footway users at all times during construction;
 - vii) details of site working hours;
 - viii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - ix) measures to control the emission of dust and dirt during construction, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development;
 - x) measures to control and monitor construction noise;
 - xi) details of any external lighting, which should comply with the requirements of condition 14;
 - xii) a scheme for recycling/disposing of waste resulting from construction works;
 - xiii) details of ditches to be piped during the construction works;
 - xiv) an undertaking that there must be no burning of materials on site at any time during construction;
 - xv) a detailed method statement and programme for the buildings works, and
 - xvi) contact details for the responsible person (site manager/office) who can be contacted in the event of any issues arising.

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

- 6) Except for investigative works, no excavation or other groundworks or the depositing of material on site in connection with the construction of any road (or any structure or apparatus which will lie beneath the road) must take place on the road construction works, until full detailed engineering drawings of all aspects of roads and sewers, including any structures which affect or form part of the highway network, and a programme for delivery of such works, have been submitted to and approved in writing by the local planning authority. The development must be implemented in accordance with the approved engineering drawings.
- 7) Prior to first occupation, the footway link from the point of access to the existing footway on Wandales Road shall be completed in accordance with the details shown on approved drawing AMA/22219/SK001.
- 8) No part of the development must be brought into use until the carriageway and any footway or footpath from which it gains access is constructed to binder course macadam level or block paved (as approved) and kerbed and connected to the existing highway network with any street lighting installed and in operation. The completion of all road works must be in accordance with a programme submitted to and approved in writing by the local planning authority before the development is brought into use.
- 9) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The submitted details shall follow an assessment of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results provided to the local planning authority.

Where a sustainable drainage system is to be provided, the submitted details shall:

- i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) Include a timetable for its implementation; and
 - iii) Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
 - 11) No development shall take place until details of the proposed finished floor levels of the dwellings in relation to the existing and proposed finished external ground levels have been submitted to and approved in writing by the local planning authority. Development shall then be carried out in accordance with the approved details.

- 12) The development hereby permitted shall be carried out in accordance with the recommendations contained in the Preliminary Ecological Appraisal dated June 2023.
- 13) Prior to the occupation of any dwelling hereby approved, a scheme for the provision of bird and bat roost features, with provision for swifts and hedgehogs, on or within buildings and/or within the site, shall have first been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to first occupation.
- 14) External lighting, including during the construction phase, shall only be installed in accordance with a scheme of lighting designed for biodiversity and to minimise light spill, which shall first have been submitted to and approved in writing by the local planning authority.
- 15) Any contamination that is found during the course of construction, 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, 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 is resumed.