



Appeal Decision

Site visit made on 23 January 2018

by **Daniel Hartley BA Hons MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 January 2018

Appeal Ref: APP/G2713/W/17/3185375

OS Field 9348, Back Lane, Great Broughton, North Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Site Plan UK against the decision of Hambleton District Council.
 - The application Ref 16/02442/OUT, dated 7 November 2016, was refused by notice dated 22 June 2017.
 - The development proposed is residential development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is submitted in outline with all detailed matters reserved apart from access. The appellant submitted an indicative layout plan at planning application stage. As part of this appeal, the appellant has submitted an amended indicative layout plan (drawing No CAL031116 02 Rev G) which shows an existing footpath running through the site. I have taken this indicative plan into account as part of the determination of the appeal, but only in so far as establishing whether it would be possible in principle to erect dwellings on the site. Whilst layout is a reserved matter, it is clear that the Council determined the outline planning application on the basis that up to 75 dwellings would be erected on the site.
3. I have taken the site address from the Council's refusal notice as this more precisely describes the location of the appeal site.

Main Issues

4. The main issues are (i) whether or not the proposal accords with the development plan for the area in land use principle terms; (ii) the effect of the development upon the character and appearance of the area; (iii) whether or not there is a mechanism in place for securing affordable housing; (iv) the effect of the proposal upon highway safety; (v) whether or not there would be suitable pedestrian links from the appeal site to local facilities and services and (vi) whether or not overall the proposal would deliver a sustainable form of development.

Reasons

Development Plan

5. The appeal site is about 4.3 hectares and is grassland used for grazing purposes. It includes four fields that are separated by mainly hedgerow and fencing. It is located immediately to the east of the defined development limit of Great Broughton and Kirby as shown on the Proposals Map of the adopted Hambleton Local Development Framework Core Strategy 2007 (CS). The site falls within land designated as countryside. The appellant acknowledges that the proposal does not accord with Policy CP4 of the CS in so far that an exceptional case has not been made for the proposal. The CS identifies Great Broughton as a service village and Policy CP4 states that *"development or activities of a scale and nature appropriate to secure the sustainability of each settlement, as identified in Spatial Principle 3 and in the Core Strategy policies, will be supported within the Development Limits of the settlements in the hierarchy"*.
6. The appeal site falls outside of the defined development limits for Great Broughton and this conflict with the CS settlement hierarchy approach to the development of areas for housing weighs against the proposal. This view is reached in the context that there is no dispute between the main parties that the local planning authority can demonstrate a deliverable five year supply of housing sites. Indeed, the appellant does not question the Council's view that *"the most recent (April 2017) assessment confirms 8.5 years supply"*.
7. In addition to the above, the Council adopted an Interim Policy Guidance Note (IPGN) in 2015. The guidance was produced to align the Council's CS Policy CP4 with the National Planning Policy Framework (the Framework) which was introduced in 2012. Unlike Policy CP4 of the CS, the IPGN does not seek to restrict all development to within the defined settlement development limits. However, it does state that *"small scale development adjacent to the main built form of a settlement will be supported where it results in incremental and organic growth. As a guide, small scale would normally be considered to comprise up to 5 dwellings. However, each development must be considered on its own merits taking into account the scale and unique character and appearance of the settlement"*.
8. Whilst layout details are reserved for a subsequent application, it is clear that it is the appellant's intention to erect a very significant number of dwellings on the site. On any reasonable basis, it could not be argued that the proposal would be small scale and the development of the site for housing would clearly exceed the up to 5 dwellings guidance. In quantitative terms, the proposal would not be small scale and, in this regard, there would be conflict with the IPGN. This is a matter which weighs against the proposal. However, it is necessary for me to also consider the proposal in terms of its impact upon the character and appearance of this countryside location taking into account policies in the CS; guidance in the IPGN and the Framework. I deal with this matter as follows.

Character and appearance

9. The appellant has submitted a Landscape Visual Impact Assessment (LVIA) prepared by AHH Planning Consultants. I have considered the conclusions reached in the LVIA in terms of both the magnitude and significance of the effect of the development of the site for housing and have also taken into account the North Yorkshire County Council's Landscape Characterisation Project 2012, which indicates that the site falls within land classed as "*vale farmland with dispersed settlements*" and that within such a land categorisation the relevant characteristics are "*a medium, large scale agricultural landscape which is delineated by a network of mature hedgerows, of containing hedgerow trees*".
10. I agree with the appellant that the effect of the proposal upon the essentially open and rural landscape would not be very significant when viewed from very long distance viewpoints given the intervening landscaping and land contours. However, there is no doubt that the scale of the proposed development would be such that it would introduce a very urban form of development into an otherwise open and rural landscape.
11. I acknowledge that the village has evolved spatially over the years, but nonetheless the character of this settlement essentially follows a linear form following the main roads. The proposal would seek to extend the built form significantly to the east and would neither represent a form of infill development nor a rounding off of the settlement. Indeed, given the position and size of the appeal site, I consider that it would represent a very significant incursion into the countryside setting, departing unacceptably from the historic and linear pattern of development in this part of Great Broughton.
12. Back Lane has a very rural appearance and the existence of relatively low density dwellings on one side of the road and the open fields on the other represents a very clear visual distinction between the otherwise built up settlement of Great Broughton and the surrounding countryside. Given the size of the appeal site and the likely extent of the built form, the open and rural views of the site, including views of the North York Moors beyond, would have a significantly adverse effect when considered from the on-site footpath in the south west corner of the site. There is an evergreen hedge along the public footpath immediately outside the site and to the north. Whilst this would provide a relatively good screen, I did notice as part of my site visit that there were some open breaks in the hedge and so it could not be reasonably argued that the proposed dwellings would not be visible from this area.
13. I do acknowledge that there is some existing vegetation alongside the boundary with Back Lane. However, and notwithstanding such vegetation, large parts of the site are clearly visible from many parts of this road. On my site visit, I was able to see over/through the mainly deciduous hedge from Back Lane with relative ease. I am not satisfied that either the existing or the proposed landscaping would suitably mitigate the adverse effects of the proposal upon the essentially open and rural character of the site when viewed from this area.
14. Whilst most of the appeal development would be set away from Green Balk, the proposed dwellings would nonetheless appear conspicuous and prominent in the landscape. This would be particularly the case when travelling along Green Balk towards the built up area of Great Broughton. On my site visit, I

noticed that the site could be seen easily from this area and that the hedgerow was low and included open gaps. The existing dwellings on Back Lane (including bungalows) are not very conspicuous in the landscape when viewed from this area owing to the topography of the land and the existence of mature landscaping which separates the appeal site from such properties.

Consequently, I do not consider that one could reasonably take the view that the proposed dwellings would relate well to the existing pattern of development when viewed from this road. They would appear prominent and intrusive in this predominantly open and rural landscape and would be very noticeable to the passer by. This would be in direct contrast to development on Back Lane when viewed from Green Balk.

15. I recognise that the indicative layout shows the introduction of new planting areas in order to soften the impacts of the proposed dwellings and the access road. However, it would take many years for such planting to reach maturity and so I afford any such proposals limited weight. In any event, the significant planting of trees within the appeal site would unacceptably detract from what is an essentially open and rural landscape. Furthermore, the existence of a new access road off Green Balk would certainly alert passers by that there was new development in the area: there is no doubt that such an engineering operation would seek to unacceptably urbanise this countryside setting.
16. I have considered some of the other viewpoints to which the appellant has referred in the LVIA. I agree that the proposal would not have a significantly adverse impact upon the landscape when viewed from much further afield. The adverse effects of the proposal upon the essentially open and rural landscape setting would be more localised and would be particularly significant when viewed from Back Lane, parts of Green Balk and from the public footpaths that cross the site. I cannot be certain whether the dwellings would be single or two storeys in height as such detailed matters are not before me. Clearly, single storey development would reduce the impact of the proposal upon the countryside setting, but not to the extent that it would alter my conclusion on this main issue.
17. For the reasons outlined above, I do not share the conclusions reached by the appellant that the proposal would result in "*only a very minor alteration to the landscape character*". Whilst, I do not doubt that it would be possible to retain some existing planting on the appeal site, for the reasons outlined above, I do not agree with the appellant that the proposal would have a "*negligible magnitude of effect and a negligible significance of effect*". I consider that that there would be some very negative and significant adverse localised effects upon the character and appearance of the landscape. On this basis, the proposal would not accord with the landscape character and design aims of the IPGN; Policy CP16 of the CS; Policy DP30 of the adopted Hambleton Local Development Framework Development Policies Development Plan Document 2008 (Development Policies DPD) and paragraph 17 of the Framework which states that planning should recognise the intrinsic character and beauty of the countryside.

Affordable housing

18. The appellant has confirmed that the proposal would include the provision of 50% affordable housing. There is no dispute between the parties that this would accord with the affordable housing requirements of Policy CP9 of the CS

and Policy DP15 of the Development Policies DPD. However, the Council maintain that this should be secured by means of the completion of a planning obligation.

19. Notwithstanding the above, the appellant has suggested that affordable housing could be secured by means of a planning condition. The appellant has provided the wording of such a planning condition which was also used by a Planning Inspector who determined planning appeal Ref No APP/G2713/W/16/3161503 at land to the east of York Road, Easingwold on 13 June 2017. Reference has also been made to a Council decision where an affordable housing condition was imposed.
20. I have considered the advice in the National Planning Practice Guidance (NPPG) in respect of whether or not affordable housing matters can be dealt with using a planning condition. The NPPG states that "*a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases....However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Where consideration is given to using a negatively worded condition, it is important that the local planning authority discusses with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency*".
21. In respect of the above, I am not aware that there are any exceptional circumstances which would justify the use of an affordable housing planning condition. Furthermore, I do not have any evidence to indicate that heads of terms or principal terms have been fully agreed between the parties. In any event, I am not persuaded that the proposal is complex and strategically important development or that there is any evidence of risk associated with the delivery of houses. For these reasons, I do not consider that an affordable housing planning condition would be appropriate. On the evidence that is before me, it would be necessary to secure the provision of affordable housing by means of a planning obligation.
22. The proposed planning condition would not meet the planning condition tests as laid out in paragraph 206 of the Framework (namely the tests of precision and reasonableness) or indeed accord with the advice as contained in the NPPG. Consequently, a mechanism is not in place to deliver affordable housing in the event that the appeal was to be allowed. On this basis, I conclude that the proposal would not accord with the affordable housing aims of Policies CP9 of the CS; Policy DP15 of the Development Policies DPD and the Framework. I acknowledge that the Inspector who determined appeal reference APP/G2713/W/16/3161503 did impose an affordable housing condition. However, I do not know if heads of terms were agreed between the parties, if there was any risk associated with housing delivery or indeed if the proposal were strategic or complex. I have determined this appeal on its individual planning merits taking into account advice in the NPPG and paragraph 206 of the Framework.

Highway safety

23. The Highway Authority was consulted at planning application stage and concluded that given that the access would be onto an unrestricted 60 mph road, it would be necessary to achieve sightlines of 2.4 m x 215 m. The Highway Authority considered that such sightlines could not be achieved as it would require the removal of the hedgerow outside of their ownership/control and that there was insufficient justification provided to justify a reduction in design speeds below the 60 mph National Speed Limit.
24. In response to the reason for refusal, the appellant commissioned a firm of highway consultants (VIA Solutions) to undertake surveys on Green Balk and Back Lane. The proposed vehicular access would be onto Green Balk and the survey results on this road show average traffic speeds of 40.3 mph and 39.6 mph for eastbound and westbound vehicles. I am satisfied that the appellant has provided reasonable justification for a reduction in the required vehicular visibility splay: the Council shares this view. In respect of highway advice in Design Manual for Roads and Bridges 2017 (DMRB), a visibility splay of 2.4 m x 120 m would be required in both directions.
25. The appellant has provided me with a plan and a letter from the Highway Authority which shows land which is part of the highway maintainable at the public expense within the meaning of the Highways Act 1980. Such a plan does seem to show some land either side of the road and within the identified highway. Nonetheless, the Council states that "*North Yorkshire County Council have received correspondence from Mr Forgan of Grove Hill, Back Lane in which Mr Forgan states that he owns the field and thereby owns the hedge in question*". I have considered the representation from Mr Forgan who claims that he has maintained the subject hedgerow for a number of years.
26. On the evidence that is before me, I cannot be certain of the accuracy of the submitted plans relative to the exact position of ownership boundaries. This is a matter that would need to be fully established by means of detailed marking out on site and further evidence of title/land ownership including clarification in terms of whether Mr Forgan owns part of the site. I have not pursued this issue any further as further clarification on this matter would not have overcome my other and overriding concerns relating to the appeal proposal. However, I do note the comments submitted by Mr Forgan which include a letter from the Highway Authority dated 18 December 2017 stating that "*the hedge is not within the control of the LHA and it is not within the power of the LHA to remove it*".
27. In conclusion, whilst I am satisfied that it would be physically possible to achieve the required vehicular sightlines, I cannot be certain that the appellant has sufficient ownership and control of all land to achieve the necessary visibility splays, including the removal of a significant amount of hedgerow. In this regard, I cannot conclude that the proposal would accord with the highway safety aims of Policy DP3 of the Development Policies DPD; DMRB and the Framework. Furthermore, and, in any event, the removal of about 100 metres of hedgerow in an easterly direction and 80 metres in a westerly direction would cause significant harm to the rural character and appearance of the area. Whilst it may be possible to erect a new hedge behind the visibility splays, this would take some time to reach maturity and, in any event, such an arrangement would depart significantly from the straight/linear hedgerows

which line either side of Green Balk. This is a level of visual harm that adds to that identified in my conclusion relating to character and appearance matters.

Pedestrian links

28. The appellant has shown a pedestrian link from the appeal site to the junction of Back Lane with Roseworth. Whilst Back Lane does not include footpaths for all of its length, I have considered the traffic volume information provided by the appellant. Based on this information, as well as what I witnessed on my site visit, I do not consider that Back Lane is a busy road. Layout is not a matter that is before me, but I am sure that it would be possible to have in place a footway crossing within the appeal site so that residents could then cross Back Lane to reach the existing pavement in Roseworth. From this location, there are two safe and lit pedestrian links (i.e. from Roseworth and from the side of No 37 Back Lane to The Dorkings) to the B1257 where there are local facilities and services.
29. I acknowledge that, despite the above pedestrian links, some residents may still choose to use Back Lane. However, the appellant has shown that there are alternative pedestrian links and, in any event, taking into account traffic survey average speeds (23.6 mph northbound and 24 mph southbound) and the length of the section of Back Lane, I do not consider that occasional use by residents would conflict with paragraph 7.2.14 of Manual for Streets which states that "*shared surface streets are likely to work well: in short lengths, or where they form a cul de sac and where the volume of motor traffic is below 100 vehicles per hour*". In addition, I do not doubt that it would be possible to include a long stretch of new footway within the appeal site and adjacent to Back Lane. This would minimise the need for residents to have to share a large section of Back Lane with vehicular traffic.
30. Subject to the imposition of planning conditions, which would inform a reserved matters submission, I am satisfied that the site could be developed for housing with satisfactory and sustainable transport links. In this respect, I therefore conclude that the proposal is capable of according with Policies CP2 of the CS and Policy DP3 of the Development Policies DPD.

Sustainable development and planning balance

31. Paragraph 7 of the Framework states that there are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform an economic, social and environmental role. I deal with each of these matters as follows.
32. I have no doubt that the occupiers of the proposed dwellings on the site would assist in supporting existing facilities and services in the area and hence that there would be some economic benefits associated with the proposed development. However, and given the scale of the proposed development, this is tempered to some extent in so far that I afford weight to the Council's comment that "*no information has been submitted in support of the application to demonstrate that the local services and facilities would be able to meet the significant increase in demand that would be generated by up to 75 dwellings*". In addition, and notwithstanding the appellant's appeal documentation, I note that a significant number of interested parties have commented that the

- shop/post office has now closed (I noticed that this was the case on my site visit) and that there is no longer a Methodist church.
33. The proposal would lead to some employment at construction stage, albeit that it would be relatively short lived. Overall, and to some extent, the aforementioned economic matters weigh in favour of the proposal.
34. There is no dispute between the main parties that the local planning authority can currently demonstrate a deliverable five year supply of housing sites. In fact, the evidence before me indicates that the Council can demonstrate well in excess of five years. However, I do acknowledge the point made by the appellant that maintaining a five year supply is a minimum requirement and that there is no ceiling in terms of housing delivery.
35. Notwithstanding the above, and recognising that the proposal would seek to boost the supply of housing in the District, the development would nonetheless introduce a very significant number of residential properties into Great Broughton and into an area of countryside. The Council's development plan strategy is to direct significant amounts of new housing to the more sustainable settlements and the IPGN states that only "*small scale*" development will be permitted adjacent to the main built form of settlements such as Great Broughton. In the context that the local planning authority can demonstrate well in excess of five years supply of housing sites, these matters diminish the social weight that I afford to the proposal in terms of the increased supply of private market housing in the District as a whole.
36. There is no doubt that the provision of 50% affordable housing in the District is a very positive social matter to weigh in the balance. However, I have no reason to doubt the comment made by the Council that "*surveys undertaken since 2011 have only identified a small demand for affordable housing in the parish of Great and Little Broughton and Greenhow. It is therefore considered that affordable housing need in the area can be met by proposals in line with the Development Plan*". Furthermore, the appellant has not completed a planning obligation which would secure the provision of any affordable housing. On this basis, I cannot afford the provision of affordable housing any positive social weight in the overall planning balance.
37. In environmental terms, I do not doubt that it would be possible, subject to the imposition of planning conditions, to ensure that there are safe and convenient pedestrian links to nearby facilities/services and public transport. The appellant says that well designed dwellings would be erected and that the properties would be energy efficient. However, these are environmental matters which essentially have neutral weight in the planning balance.
38. The appeal site would be located outside but on the edge of the settlement of Great Broughton. In respect of paragraph 55 of the Framework, the proposed dwellings would not be isolated in so far that they would not be far away from other places, buildings or people. Nonetheless, I have found that the proposal, including the formation of a new access (including removal of hedgerow) and the erection of a very large number of dwellings, would result in a significantly adverse impact upon the essentially open and rural character of the countryside. This would be contrary to the one of the 12 core planning principles in the Framework which is to "*recognise the intrinsic character and beauty of the countryside*".

39. In addition to the above, I have insufficient evidence before me to conclude that it would be possible to erect dwellings on the site without severe harm being caused to matters of highway safety: it may be physically possible to achieve the required visibility splays, but it is not clear whether the appellant has exclusive control of all of this land or, if other land ownership consent were needed, whether permission to remove the said hedgerow, and to enable permanent retention of sightlines, would be forthcoming.
40. On balance, the aforementioned adverse environmental and social matters, coupled with the in principle conflict with the Council's development plan (including the IPGN as a material planning consideration) approach to the delivery of housing development in sustainable locations, significantly and demonstrably outweigh the aforementioned benefits of the proposal. Therefore, I conclude that the proposal would not deliver a sustainable form of development.

Other Matters

41. I have taken into account representations made by other interested parties. Many of the comments made have already been addressed in my reasoning above.
42. I note the concerns raised by Kirby-in-Cleveland Parish Council that the proposal would result in a very significant increase in the number of dwellings in the village from one scheme. There is no pressing need to release this site for residential development in housing land supply terms and the proposal would be significant in scale. I have found that material harm would be caused to the character and appearance of the countryside. I agree with the Council that in the event that it was necessary to release significant amounts of land for housing, this should preferably be undertaken as part of a Local Plan review process. In any event, I have determined this appeal on its individual planning merits and against adopted development plan policies, national planning policy and all other material planning considerations.
43. Whilst I note the comments made relating to flooding in the area, this would be a matter that would be capable of being addressed by means of a planning condition. I acknowledge that the proposal would lead to an increase in traffic in the area, but I have no objective evidence before me to support the view that the main local highway network could not deal with increased traffic flows.
44. I note that comments have been made by the occupiers of some of the properties which face onto the site. Whilst the proposal would result in the loss of some views, the Courts have held that the loss of a view is not a material planning consideration. The proposal would cause significant harm to the character and appearance of the countryside, but I am satisfied that it would be possible to erect dwellings on the site without material harm being caused to the living conditions of the occupiers of surrounding dwellings in terms of loss of light, privacy and outlook.
45. I acknowledge that some of the interested parties feel that Great Broughton should no longer be designated as a service village given that the shop/post office has closed down and as the Methodist church is now in residential use. This is a matter that would need to be considered as part of the review of the development plan for the area and, in any event, I have not been provided with any objective evidence to suggest that a shop (with or without post office)

would not open again in the future. In reaching this view, I have also taken into account comments made by the Council in respect of the recent determination of planning application 17/00941/FUL (land north of Broughton Grange Farm, High Street, Great Broughton).

46. I have considered the comments made by Mr Cooper (the landowner), but they do not adequately address the planning harm that would be caused in the event that planning permission were to be allowed.
47. None of the other matters raised outweigh or alter my overall conclusion on the main issues.

Conclusion

48. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR

Richborough Estates