



Appeal Decision

Hearing held on 17 January 2018

Site visit made on 17 January 2018

by A Jordan BA Hons MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 January 2018

Appeal Ref: APP/ N2739/W/17/3170320

Yewtree House, Main Street, Kelfield, York, YO19 6RG

- 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 Mr Richard Atkinson against the decision of Selby District Council.
 - The application Ref 2016/0597/OUT (18/14/114/PA), dated 20 April 2016, was refused by notice dated 30 August 2016.
 - The development proposed is demolition of existing dwelling, garage, farm buildings and glasshouse and erection of residential development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is made in outline form, with all matters reserved. The submitted plans comprise a location plan (ref Atkinson 01) and an indicative site plan (ref Atkinson 02), which shows a layout for 12 dwellings, with access towards the eastern end of the frontage.
3. A unilateral undertaking relating to the provision of affordable housing and providing a contribution toward waste and recycling has been submitted in support of the appeal. Following the Ministerial Statement of November 2014¹ these matters would only be required if the development comprised more than 10 dwellings. Nonetheless, the presence of the agreement indicates that the appellant wishes the potential for the scheme to provide more than 10 dwellings to be considered. As access and layout are reserved matters I have taken the layout plan as an illustration of potential future development only.

Main Issues

4. The main issues for the appeal are:
 - The effects of the proposal on heritage assets;
 - The effect of the proposal on protected species;
 - Whether the development is in a sustainable location, having regard to local and national policies which seek to reduce the need to travel;

¹ Ministerial Statement of November 2014 setting out national policy on Section 106 which should be read alongside the National Planning Policy Framework.

- The effects of the proposal on the character and appearance of the area;
- Whether the proposal would make appropriate provision for on-site recreational open space;

Reasons

Background

5. The parties confirmed at the hearing that they were not in dispute in relation to housing land supply matters. The Council consider that they have 6.2 years of available housing land. I have been provided with no evidence to dispute this and so have proceeded on that basis.
6. Planning law indicates that applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the *National Planning Policy Framework* (the Framework), indicate otherwise. The development plan for the area is made up of the *Selby District Core Strategy* (Core Strategy) and the *Selby District Local Plan* (Local Plan). The Local Plan predates the Framework.
7. Policy SP1 of the Core Strategy outlines the presumption in favour of sustainable development explicit in the Framework. Policies SP2 and SP4 set out a spatial strategy for development which seeks to reduce the need to travel by focusing the majority of new development in larger settlements and allowing only limited development in smaller order settlements with fewer services. Policy SP2 allows for limited infilling in villages within settlement boundaries and seeks to restrict new dwellings in open countryside to those categories of development which relate to the reuse or replacement of existing buildings or which relate to the rural economy. This reflects guidance in the Framework, which is specifically referred to in the supporting text to the policy, and which refers to the need to resist isolated new dwellings in the countryside.
8. Policy ENV1 of the Local Plan seeks to achieve good quality development which takes account of the character of the surrounding area, the capacity of local services, and the effects of the proposal on local wildlife and archaeological or other features important to the character of the area. Policy RT2 relates to the provision of recreational open space (ROS) within new development. Policy SP4 seeks development within villages which is sensitive in scale and form to the character of the village. These aims are consistent with guidance in the Framework which seeks high quality design and a good standard of amenity for future occupiers of development.
9. SP19 of the Core Strategy seeks to achieve high quality design which has regard to local character. Policy SP18 aims to protect the high quality and local distinctiveness of the natural and man-made environment, including heritage assets. ENV28 relates to proposals which may affect sites of possible archaeological interest and requires that in such cases an assessment is submitted as part of a planning application and used to determine the most appropriate course of action. These policies reflect the core principles of the Framework which seek to reflect the different roles and character of different areas and to recognise the intrinsic beauty of the countryside. The Framework also seeks to contribute to conserving and enhancing the natural environment and to conserve heritage assets in a manner appropriate to their significance.

The Effects of the Proposal on Heritage Assets;

The Scheduled Ancient Monument

10. The site lies to the south of Kelfield Moated Site and Fishpond which is a Scheduled Ancient Monument (SAM). The Council and Historic England consider the appeal site to be within the setting of the SAM. The appellant disputes this and contends that there are no clear views of the SAM from the appeal site and that, as such, the development is not considered to impact upon the setting of the heritage asset.
11. The Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced. Setting is not fixed and may change as the asset and its surroundings evolve. I noted on site that the SAM was clearly visible from the rear of the appeal site in a north easterly direction, along with existing structures and buildings which make up the dwellings along Moor End and Main Street. Having regard to the guidance in the Framework, I am therefore of the view that the appeal site forms part of the wider setting of the SAM.
12. The Framework advises that in determining applications applicants should be required to describe the significance of any heritage assets affected, including the contribution made by their setting. It also advises that significance can be harmed through development in its setting. Aside from a copy of the listing, and an assessment of the visibility of the asset in public views and in views from the site, which I have found to be flawed, the proposal is not accompanied by any meaningful assessment of the significance of the SAM or the contribution the setting of the asset might make to that significance.
13. The application is made in outline form. As the proposal is for residential development, and a large extent of the appeal site is visible from the asset, it is reasonable to assume that additional built development on site could be visible within the setting of the asset. An indicative plan shows the rear of the site being used as garden land, but this is indicative only and I cannot conclude with any certainty from the information before me what the extent of built form on site would be. I note that Historic England have expressed particular concerns in this regard.

Yewtree House

14. The proposal also comprises the demolition of the existing farmhouse. The parties dispute whether this should be considered to be a non-designated heritage asset. Though the building does not appear to have been formally identified as such, and I have been provided with no formal assessment of its significance, I note that Historic England consider it to be a building of character which possibly pre-dates 1840. On this basis it is clearly capable of being considered as a non-designated heritage asset, and its significance should be taken into account in determining the impact of the scheme. The appellant has advised that the building is in a poor state of repair and is of limited interest apart from its age, although this evidence is largely circumstantial as neither party has provided a considered assessment of the building.
15. It appears to me that despite the need for repair, and notwithstanding the functional appearance of the farm buildings around it, the traditional appearance of Yewtree House makes a positive contribution to the streetscene. Without details of what would replace it I cannot conclude that its loss would be

justified in this case. I take into account that the demolition of the building could occur after Prior Notification, however, as I have no convincing grounds to conclude this might occur independently of a planning application for redevelopment, I give no weight to this matter.

Archaeology

16. The site is identified by the County Archaeologist as being of high archaeological potential, with the potential for Medieval and possibly Anglo-Saxon remains. The appellant has indicated that the current use has uncovered nothing of archaeological interest but without any formal assessment I give no weight to this view. The appellant has suggested that a condition for such works to be carried out before development commences on site would be a suitable means of ensuring this evaluation takes place and would enable any mitigation to be carried out. I am also mindful of guidance within Planning Practice Guidance which suggests that only a very small proportion of sites will require detailed assessment.
17. Furthermore, I have not been advised that archaeological interests would preclude development altogether, and the layout of any scheme has not yet been determined. It would therefore be acceptable in this case to carry out appropriate surveys prior to any decision relating to layout and I am therefore satisfied that this matter does not weigh against the proposal.

Conclusion on Heritage Assets

18. In coming to a view in relation to heritage assets, I have considered the need for a proportionate approach, and that the information required in support of a development should be no more than is necessary to reach an informed decision. The Framework also recognises that heritage assets are irreplaceable and that great weight should be given to an asset's conservation. The more important the asset, the greater the weight should be. It advises that SAMs should be considered alongside Grade I and II* listed buildings as heritage assets of the highest significance.
19. I take account of the fact that permission has been granted for albeit smaller scale development within the setting of the SAM in recent years. Whatever the circumstances of such development, it does not in my view provide sufficient justification for not adopting a precautionary approach in this case.
20. Therefore, having particular regard to the potential effects of the proposal on Kelfield Moated Site and Fishpond, I must adopt a precautionary approach. I cannot be satisfied as to the extent of any harm without a meaningful assessment of the significance of the assets, or any rigorous appraisal of setting, and without being assured of the scale, form or location of development which would take place. I therefore wholly concur with the Council that without this, I cannot conclude that the public benefits of the scheme would outweigh any harm to the significance of the designated heritage asset. The proposal also fails to justify the loss of Yewtree House.
21. On the first matter I therefore conclude that although the proposal would not conflict with Policy ENV28, it would nonetheless fail to comply with the requirement of policy SP18 which seeks to conserve the District's heritage assets and with guidance in the Framework which has similar aims.

The Effect of the Proposal on Protected Species

22. The appellant has submitted a phase I habitat survey which indicates that 2 ponds within 500m of the site are known habitats for Great Crested Newts. A further pond has also been identified as being a likely habitat. The presence of a European protected species is therefore a material consideration in this appeal.
23. The Framework seeks to minimise the impact of development on biodiversity by adopting a precautionary approach to schemes where the effects of development may impact on protected species or their habitats. It states that if significant harm resulting from a development cannot be avoided, (through locating on an alternative site with less harmful impacts) adequately mitigated or, as a last resort, compensated for, then planning permission should be refused. It goes on to state that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats. Proposed development on land within or outside a protected site, likely to have an adverse effect on such a site should not normally be permitted.
24. The appellant's ecologist has advised that a phase II habitat survey is necessary to establish the presence or absence of protected species on the site. This should comprise 4 survey visits, of which 2 should occur between mid-April and mid-May. The survey is necessary to comply with the requirements of Article 16 of the EC Habitats Directive, and with the guidance of Natural England. Case Law² also indicates that in granting permission the decision maker must be assured that there is a reasonable likelihood of a License for the works being granted by Natural England.
25. Without a phase II survey I cannot conclude that a licence would be likely to be granted, as I am unable to ascertain the extent of any harm that the development may cause. It would not be appropriate to impose a condition requiring further survey work, as this presupposes that mitigation or compensation would be acceptable in principle, rather than avoidance. I therefore cannot accept the appellant's view that additional surveys are unnecessary at outline stage and could be carried out prior to the approval of reserved matters.
26. On the second matter I therefore conclude that the proposal has failed to demonstrate that it would not have an adverse effect on protected species and their habitat. It would therefore conflict with policies SP18 of the Core Strategy and Local Plan Policy ENV1, which together seek to retain, protect and enhance wildlife habitats and with the guidance in the Framework which has similar aims.

Whether the Development is in a Sustainable Location

27. The Council consider that the proposal would be contrary to the aims of sustainable development explicit in the Framework, which seek to avoid a pattern of development which leads to reliance on the private car. Kelfield has very limited public services, with only a public house and a village hall. A local bus service runs throughout the day providing links to Selby and York via Cawood which would provide some access to education, shopping and employment in local higher order settlements. However, given the frequency

² Wooley vs Cheshire East Borough Council and Millenium Estates Limited [2009] EHW 1227 (admin).

of services it is unlikely that this would serve the needs of most people and most future residents of the development would be largely dependent upon the private car to access work and services.

28. I take into account that car trips from the site to Selby would be relatively short by rural standards. I also take into account that the flat terrain would be attractive for those seeking to travel by bike. The appellant has commented that if the site was smaller, and so fell within the village envelope, it would not conflict with policy SP2 of the Core Strategy, which allows for limited infilling within development limits, and that this should reduce the weight attributed to any argument relating to sustainable location. However, I concur with the Council's view that larger numbers of dwellings would have a proportionate effect in relation to increased numbers of car trips and that this cumulative effect is a relevant consideration. In this regard the proposal would contribute to a pattern of development where residents would be largely reliant upon the private car and would fail to reduce the need to travel. The proposal would allow new residents to provide some support for services in Kelfield and nearby villages. However, as such services are relatively limited this reduces the weight I attribute to this as a benefit.
29. Accordingly on the third matter I conclude that the proposal would fail to comply with policy SP2 of the Core Strategy which seeks to focus new development within the existing settlements best placed to provide services to support new residents. It would also conflict with guidance in paragraph 37 of the Framework which seeks to achieve a sustainable pattern of development. This weighs against the proposal in the planning balance.

Character and Appearance

30. The site lies in the centre of Kelfield. The village exhibits a mix of architectural styles, with some attractive traditional buildings making up the wider streetscene. Buildings along Main Street sit close to the road with the long gardens which lie behind only evident in views from open land to the rear. The site comprises the existing farmhouse and the collection of agricultural outbuildings behind. It is clearly agricultural in character and although the farm buildings on site are functional in form, they nonetheless appear in keeping with the rural character of the wider area.
31. Taking into account the existing pattern of development, where the built envelope lies relatively close to Main Street and forms a strong frontage, I have some sympathy for the view of the Council, that the size and position of the site has the potential to facilitate an incongruously suburban backland development, which could erode the strong built form evident in the wider streetscene. However, I share the view of the appellant, that a scheme could be implemented which continued the relatively tight urban form along the Main Street. It would also be possible to position any dwellings to the rear close to the existing built envelope so that rear gardens extended towards the rear of the site. Furthermore, whilst I accept such a layout would have a domesticating effect on land which lies outside the built envelope of the village, it would nevertheless replicate the form of development on either side of the site and would not appear incongruous in this context, or have a marked visual effect of the character of the countryside in this location.
32. I have already expressed my concerns in relation to heritage assets, to which a higher test applies. Notwithstanding this, in considering in this case whether

future development could be comfortably assimilated into the existing village fabric, I am of the view that an appropriate layout could be secured at reserved matters stage. On the fourth matter I therefore conclude that the site could accommodate an acceptable form of development which would not impact on the established character of the village. Accordingly, I find no conflict with Policies SP4 and SP19 of the Core Strategy which together seek development which is sensitive in scale and form to the character of the village, or with guidance in the Framework, which has similar aims.

Whether the proposal would make appropriate provision for on-site recreational open space;

33. Policy RT2 relates to the provision of recreational open space (ROS) within new development and requires that for schemes of more than 10 buildings ROS is provided either on-site, off-site within the locality, off-site elsewhere, or a financial contribution is made to enable provision elsewhere. The Council are of the view that on-site provision should be provided in this case. The appellant has no objection to the principle of such provision, but considers that taking into account the outline nature of the scheme, this matter could be dealt with by way of a planning condition. The Council have concerns as to whether a condition would facilitate appropriate maintenance.
34. If such a condition was sufficiently precise, and required a management plan which set out management responsibilities and maintenance requirements for the identified area, it could meet the tests in paragraph 204 the Framework. Such a management plan need not necessitate the use of a planning obligation, and so would not conflict with guidance in the Planning Policy Guidance. Accordingly, on the fifth matter I find no conflict in principle with policy RT2 of the Local Plan.

Other Matters

35. The proposal would increase the quantity and choice of accommodation in the district. Notwithstanding that housing land supply is not a matter in dispute at this appeal, the provision of housing is nonetheless a benefit of the scheme which accords with the impetus for housing growth explicit in the Framework and to which I attribute significant weight. The proposal is accompanied by a Unilateral Undertaking (UU) which would facilitate the provision of affordable housing on site at a level of 40% of the total number of units, with a tenure split of 30-50% shared ownership and 50-70% rented.
36. The UU commits to providing affordable housing regardless of the number of dwellings. The WMS³ states that for schemes of 10 dwellings or less, affordable housing cannot be required. However, the WMS does not prevent it being provided and its provision is a benefit to which I attribute significant weight.
37. The proposal would bring short term economic benefits during construction and this carries some limited weight. The financial contributions derived from Council Tax, the Community Infrastructure Levy and the Unilateral Undertaking⁴ are all largely required to mitigate and provide services to the

³ Ministerial Statement of November 2014 setting out national policy on Section 106 which should be read alongside the National Planning Policy Framework.

⁴ The Unilateral Undertaking would provide for a tariff style contribution for all development, contrary to the requirements of the WMS. As there is no basis for seeking such a contribution, in the case of developments of less than 10 dwellings such financial contributions cannot be taken into account in the planning balance.

development proposed, and are therefore a neutral factor. The proposal would help sustain local services, but the weight attributed to this as a benefit is limited by the lack of services locally.

38. The effect of the proposal on highway safety was a concern for some residents. The access point shown on the plan is indicative only. The highways officer has indicated that 2.4 by 45m splays are required at the entrance. Based on my observations on site and noting the width of the available frontage and the presence of a footpath to the front, I see no reason why an appropriate access could not be facilitated. I therefore give no weight to this matter. I also note concerns have been raised in relation to the potential effects of the proposal on residential amenity. Given that the scheme is outline form, bearing in mind the size of the site, I see no reason why development could not be accommodated on site without compromising the living standards of adjoining occupiers. Furthermore, taking into account the potential to implement sustainable drainage systems on site to limit future run-off, which could be secured by condition, I do not share the concerns of some residents in relation to the drainage of the site.
39. The appellant's appeal submission indicates that having regard to the Council's concerns in relation to layout and accessibility to local services, the appellant would be willing to accept a condition restricting the number of units on site. However, such a restriction would not respond to concerns in relation to protected species and heritage assets and so this matter does not alter my conclusions above.

Conclusion

40. The proposal has failed to demonstrate that it would not have an adverse effect on protected species and their habitat or upon heritage assets. It would also fail to comply with local and national policy which seeks to reduce the need to travel by locating new development in sustainable locations. The contribution to housing, including affordable housing, and the limited economic benefits of the scheme would not outweigh this identified harm.
41. Therefore, having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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| Melissa Madge | MM Planning |
| Rachael Barlett | 2RB Planning |
| Richard Atkinson | Appellant |

FOR THE LOCAL PLANNING AUTHORITY:

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|-------------------------------------|----------------------------|
| Richard Welch BA (Hons) MPlan MRTPI | Selby District Council |
| Richard Wood BA (Hons) BPI MRTPI | Selby District Council |
| Simon Eades | Selby District Council |
| Ann Rawlinson | Selby District Council |
| John Hunter of Counsel | for Selby District Council |

DOCUMENTS SUBMITTED AT THE HEARING:

1. Proposed condition relating to recreational open space.

Richborough Estates