



Appeal Decision

Site visit made on 13 November 2018

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th May 2019

Appeal Ref: APP/E2734/W/18/3201820

Land at Chapel Lane, Marton Le Moor HG4 5AT

- 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 William Chester against the decision of Harrogate Borough Council.
 - The application Ref 17/04295/OUTMAJ, dated 26 September 2017, was refused by notice dated 7 February 2018.
 - The development proposed is residential development up to 16 dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development up to 16 dwellings at Land at Chapel Lane, Marton Le Moor HG4 5AT in accordance with the terms of the application, Ref 17/04295/OUTMAJ, dated 26 September 2017, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Mr William Chester against Harrogate Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The new National Planning Policy Framework (the Framework) was published in July 2018 and revised in February 2019. I have taken this into consideration when determining the appeal.
4. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
5. The application was originally submitted in outline with only access committed for consideration at this stage. The layout, external appearance, scale and landscaping have been reserved. Indicative plans showing a potential site layout and possible elevational designs have been submitted but, aside from showing the access point, these are not committed at this stage. I have therefore considered the appeal on this basis.

Main Issues

6. The main issues are:

- The effect of the development on the character and appearance of the area; and
- Whether sufficient information has been provided to indicate that the site can be adequately drained.

Reasons

Character and Appearance

7. The appeal site is located off Chapel Lane and currently comprises a field. It is bounded by walls and has a small group of trees located centrally within the site. The appeal site is bounded to the north, west and partially to the east by existing dwellings and there is an access track running along the eastern side boundary, beyond which is a small allotment with outbuildings. The appeal site falls within Character Area 76 of the Harrogate District Landscape Character Assessment (2004) which aims to ensure that new development respects the vernacular and settlement pattern, amongst other things.
8. The proposed development would introduce up to 16 dwellings into the site. At this stage the number of dwellings, the layout of the site, external appearance and scale of the dwellings and landscaping are reserved for later consideration. The existing access running to the eastern side of the site would serve the proposed development.
9. The location of the site adjacent to existing residential development serves to reduce the openness of the site, as do the boundaries of the site. The presence of the allotment and associated buildings and the track access appear to me to represent a delineation between the main village and the wider countryside beyond. I therefore find that the development of the appeal site would relate sufficiently well with the existing built form and would therefore not be incongruous with the existing form and character of the area. There are properties visible to the rear of the site and therefore I find that an in-depth development of up to 16 properties would represent a rounding off of the village rather than an encroachment or sprawl into the countryside. I find that the development of the site for a comprehensive scheme of housing would not result in harm to the character and appearance of the area.
10. I have had regard to the previous appeal decision on the appeal site which determined that the settlement pattern would not be respected, and the development would represent a sprawling, awkward addition. However, this was for two dwellings only which would be set within very large plots and in that case the development would have been linear. This is materially different to the comprehensive development currently proposed, which would round off the settlement in a more cohesive manner than the previous scheme.
11. I therefore conclude that the proposed development would not result in an adverse effect on the character and appearance of the area. It would therefore comply with Policy EQ2 of the Harrogate District Local Development Framework Core Strategy (2009) (Core Strategy). This seeks to protect and, where appropriate, enhance the high quality natural and built environment and the landscape character of the whole district.

Drainage and Flooding

12. The Appellant has provided a Flood Risk Assessment and Drainage Strategy (dated 20 April 2018) which identifies the infiltration rates for the site. The Council have raised concerns that these rates indicate poorly draining soils, however this does not necessarily result in the site being unable to be suitably drained. The submitted strategy provides details of a proposed surface water drainage system which is supported by a Phase 1 Desk Study and Phase 2 Site Investigation to demonstrate that the ground would be suitable for infiltration drainage. Details of the foul drainage arrangements have also been provided within this document.
13. I have noted the consultee responses in relation to the drainage of the site. However, I have had regard to the fact that the proposed layout has not yet been established and accordingly, I consider that the level of detail provided is commensurate with the outline stage of the proposal. Further details of the soakaway calculations, the required easements and SUDS systems could reasonably be provided once the formal layout of the site is identified.
14. I have had regard to the other examples of sites where drainage has been secured by condition, and the comments from the Council highlighting the differences between these sites and the appeal site. However, I have considered the appeal proposal on its own merits and I find that sufficient information has been provided at this stage to demonstrate that a suitable method of drainage could be achieved for the development. I therefore consider that the further details could reasonably be secured by conditions.
15. The development therefore complies with Policy EQ1 of the Core Strategy. This seeks to ensure that all new development minimises flood risk and waste, amongst other things.

Other Matters

16. The proposed development would meet the Council's threshold for the provision of affordable housing. The Planning Practice Guidance (PPG) identifies that the use of a condition securing a planning obligation or other agreement is unlikely to be appropriate unless in exceptional circumstances. Accordingly, the Appellant has provided a signed and dated Unilateral Undertaking (UU). This legal agreement details the provision of an affordable housing contribution to be calculated in accordance with the Council's requirements in the event that development provides between 6 and 10 dwellings, or the provision of an affordable housing scheme if the development is for 11 or more dwellings.
17. The Council have reviewed the UU and have raised no objections to its content. I find that on the basis that the proposed development is in outline with no fixed number of dwellings, that the content of the UU is adequate and reasonable to secure a suitable form of affordable housing once the future details of the development are committed.
18. Initially, the Council identified that they could demonstrate a 4.5 years supply of housing land which represents a shortfall. However, this has been updated and the Council advise that they can demonstrate a housing land supply in excess of 5 years. Notwithstanding this revised figure, the 5-year housing land supply is not a ceiling and the proposed development remains acceptable for the above reasons.

-
19. Local objections and a petition were received concerning, in addition to the above matters, road safety, pressures on the local infrastructure and amenities, light, noise and air pollution.
 20. In relation to road safety, the development would generate additional traffic which would use the village roads. However, I find that adequate visibility could be achieved at the access point. Whilst additional dwellings have the potential for noise from occupiers, I do not consider that these would be to excessive levels given the domestic nature of the development. A condition for a construction management plan can be imposed which would monitor the noise and dust levels during the construction of the development. The Council have raised no concerns over highway safety, air and noise pollution and impacts on infrastructure and amenities and I have little evidence before me which would lead me to conclude differently on these matters.
 21. Concerns have been raised over the impact of the development on the local park. The park is located on the opposite side of the road to the appeal site, accessed off Chapel Lane. Whilst the development would be in proximity to the park and would generate additional traffic in the immediate area, I have little evidence before me to demonstrate that the proposed development would result in harm to the park or its users.

Conditions

22. In addition to the standard time limit conditions for outline permissions I have imposed a condition listing the approved plans as this provides certainty. The Council have requested conditions which I have considered against the advice contained in the Planning Practice Guidance and amended or omitted where necessary.
23. I have imposed conditions to limit the removal of trees and hedgerows and for their protection in the interests of the biodiversity of the area. I have included conditions for contamination investigation and remediation to ensure that the site is suitable for its end use. A construction method statement condition is necessary in the interests of protecting the living conditions of nearby occupiers and to ensure the site is developed safely. Drainage conditions are necessary to ensure the site is suitable and correctly drained in the interests of the living conditions of future and nearby occupiers. I have included conditions relating to highway and parking details to ensure that the development does not adversely impact on highway safety or the living conditions of future and existing occupiers. I have imposed a condition relating to public open space and village hall facilities as this is supported by the requirements of Policy C1 of the Core Strategy.
24. I have not imposed the suggested affordable housing condition as this has been secured by the submitted legal agreement. I have not imposed separate landscaping or external materials conditions as these details will be secured by condition 1. I have not included a condition for electric vehicle charging points as this has not been sufficiently justified as being reasonable and necessary by the Council. A condition restricting the opening of the windows is not reasonable or necessary as the layout of the site is not yet committed.

Conclusion

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

R Norman

INSPECTOR

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 Scale 1:1250, Drawing Number CHE/3.1 in respect of access only.
- 5) No hedgerows or trees shall be removed during the bird nesting season (March – August inclusive) unless a check by a suitably experienced ecologist demonstrates that no actively nesting birds would be disturbed, to the satisfaction of the local planning authority.
- 6) Prior to any works in proximity to, or involving the trees and hedging on the site, details of a tree protection scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of root protection area fencing in line with the requirements of British Standard BS 5837:2012, or any subsequent amendments to that document.
- 7) The agreed root protection works shall be implemented in accordance with the agreed details and shall be maintained until the development is completed. There shall be no excavations, storage of materials and machinery, parking of vehicles, deposit of rubble and soil, lighting of fires or disposal of liquids within the root protection areas.
- 8) Prior to any works other than for site clearance or those necessary to comply with the requirements of this condition, 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 historic environment based on the findings of Phase 1 Desk Study and Phase 2 Site Investigation Report shall be submitted to and approved in writing by the local planning authority. The scheme should include details of all works to be undertaken, proposed remediation objectives and criteria, a timetable of works and site management procedures, and should 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) The remediation shall be carried out in strict accordance with the approved remediation scheme, and two weeks written notice of commencement of the remediation works shall be submitted to the local planning authority. Following the completion of the remediation measures, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.
- 10) Any contamination that is found during the course of construction of the approved development 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 and 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 relevant phase of development is resumed or continued.

- 11) No development shall take place, other than those required for site investigation, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- a) A traffic management plan to include any construction traffic routes, the management of construction traffic, wheel washing facilities, a highway condition survey of the identified routes and the parking of vehicles of site operatives and visitors;
 - b) storage of plant and materials used in constructing the development;
 - c) the erection and maintenance of any signage;
 - d) measures to control the emission of dust and dirt during construction;
 - e) a noise management plan which shall provide for construction work to be only carried out between the hours of 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays, with no work to take place on Sundays and Bank or Public Holidays; and
 - f) a scheme for the management of surface water resulting from demolition and construction works.

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

- 12) No development, other than for site clearance or initial site investigation, shall take place until details of the proposed means of disposal of foul water drainage for the whole site, including details of any balancing works, off-site works and phasing of the necessary infrastructure, have been submitted to and approved in writing by the local planning authority. The approved foul drainage works shall be completed prior to the first occupation of the approved development.
- 13) No development, other than for site clearance or initial site investigation, shall take place until drawings showing details of the proposed surface water drainage strategy have been submitted to and approved in writing by the local planning authority. No piped discharge of surface water from the site shall take place until the approved works to provide a satisfactory outfall has been completed. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development and will include:
- a) A timetable for implementation;
 - b) A drainage system designed with sufficient on-site attenuation so that flooding does not occur on any part of the site for a 1 in 30 year rainfall event, nor any flooding for a 1 in 100 year rainfall event in any part of a building (including a basement) or in any utility plant susceptible to water (e.g. pumping station or electricity substation) within the development, except within an area that is designated to hold and/or convey water. The design shall also ensure that storm water resulting from a 1 in 100-year rainfall event, plus an allowance to account for climate change and urban creep can be stored on this site without risk to people or property and without increasing the restricted flows off-site;

-
- c) Details regarding pollution control from parking and hard standing areas;
 - d) A site plan showing the exceedance flow routes during extreme storm conditions over the 1 in 100-year event or exceedance or failure of the drainage system;
 - e) Details with regard to the maintenance and management of the approved scheme to include drawings showing any surface water assets to be vested with the statutory undertaker/highway authority and subsequently maintained at their expense, and/or any other arrangements to secure the operation of the approved drainage scheme/sustainable urban drainage systems throughout the lifetime of the development, including identification of any surface water assets that will not be maintained at public expense, copies of the draft deed of covenant to be established with incoming homeowners to identify their future responsibility, physical access arrangements, establishment of easements/maintenance responsibility with third party landowners and maintenance details, contractor and frequency.
- 14) No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall for surface water, other than the existing public sewer, have been completed in accordance with details to be submitted to and approved by the local planning authority.
- 15) Prior to the commencement of any works specifically relating to the formation of any highway that is to be retained upon the completion of development or the commencement of construction of any dwelling, the following details shall have been submitted to and approved in writing by the local planning authority in consultation with the local highway authority:
- a) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:
 - i. The proposed highway layout including the highway boundary;
 - ii. Dimensions of any carriageway, cycleway, footway and verges;
 - iii. Visibility splays;
 - iv. The proposed buildings and site layout including levels;
 - v. Accesses and driveways;
 - vi. Drainage and sewerage system;
 - vii. Lining and signage;
 - viii. Traffic calming measures; and
 - ix. All types of surfacing, kerbing and edging.
 - b) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:
 - i. The existing ground level;
 - ii. The proposed road channel and centre line levels; and
 - iii. Full details of the method and means of the surface water drainage proposals to prevent water from discharging onto the highway.
 - c) Full highway construction details, including:
 - i. Typical highway cross-sections to a scale of not less than 1:50 showing specifications for all types of construction proposed for carriageways, cycleways and footways;
 - ii. When requested, cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels;
 - iii. Kerb and edging construction details; and
 - iv. Typical drainage construction details.

-
- d) Details of all street lighting;
 - e) Full working drawings for any structures which affect or form part of the highway networks;
 - f) A programme for completing the works.
- 16) Prior to the first occupation of the development hereby permitted the carriageway and any footway from which it gains access shall be constructed to basecourse macadam level and/or block paved and kerbed in connection to the existing highway network, with street lighting installed and operational. The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing by the local planning authority in consultation with the highway authority before the first dwelling is occupied.
- 17) No works, other than for site clearance or site investigation, or the depositing of material on the site, shall take place until full details of the construction access have been submitted to and approved in writing by the local planning authority. The crossing of the highway verge shall be in accordance with the approved details and/or Standard Detail number E6 of the local highway authority. Once constructed, no vehicles shall access the site except via the approved access and the access shall be maintained in a safe manner for the duration of the construction works.
- 18) Prior to the first occupation of the development hereby permitted, the approved parking facilities shall be provided and shall thereafter be retained for their intended purpose at all times.
- 19) Prior to the first occupation of the development hereby approved, either full details of public open space and village hall provision to serve the development in accordance with Policy C1 of the Harrogate District Core Strategy or alternative arrangements for the public open space and village hall provision, shall have been submitted to and approved by the local planning authority.