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## 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: 25 January 2018**

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**Appeal Ref: APP/E2734/W/17/3179766**

**Land south of Back Lane, Kirkby Malzeard, Ripon HG4 3SN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr J Umpleby against Harrogate Borough Council.
  - The application Ref 17/00366/OUT, is dated 25 January 2017.
  - The development proposed is the erection of five dwellings with a combined gross internal floor area of less than 1,000 square metres.
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### Decision

1. The appeal is dismissed.

### Procedural Matters, Background and Main Issues

2. The application is submitted in outline with all detailed matters reserved. However, an indicative layout accompanies the outline planning application and this shows the erection of five dwellings with access taken from Back Lane. I have taken this plan into account only in so far as establishing whether it would be possible in principle to erect five dwellings on the site.
3. I have taken the appeal site address from the Council's registration letter as this is more precise.
4. The appeal has been submitted as the Council failed to determine the planning application within the prescribed eight week determination period. However, the Council has prepared an appeal statement (referenced as "delegated decision by Chief Planner") and this indicates what decision it would likely have made.
5. In the context of the above, the main issues are: (i) whether or not the proposal would make efficient use of land; (ii) whether or not the proposed dwellings could be served by an acceptable and safe access from Back Lane; (iii) the effect of accessing the site from Back Lane upon the character and appearance of the area and (iv) the effect of the proposal upon biodiversity.

### Reasons

6. The appeal site is about 0.2 of a hectare and all of it is washed over by the Nidderdale Area of Outstanding Natural Beauty (AONB) including Back Lane. It forms part of a larger parcel of land which is proposed to be allocated for

housing (Site KM5) in the Harrogate District Local Plan: Publication Draft 2018 (emerging LP).

7. The indicative site layout plan shows the demolition of an on-site barn to the north east of the site and the erection of five dwellings arranged around one central private drive. Access is a reserved matter, but the indicative plan and accompanying planning documents indicate that access would be from Back Lane. Back Lane is an adopted highway of single vehicle width without footways or passing places.
8. The appeal site is situated at a higher level than Back Lane (approximately 1 metre) and is screened from this road by a mature and dense hedgerow. To the northern side of Back Lane are residential properties and commercial outbuildings which are mainly built in stone. Along the western boundary of the appeal site is a small group of two storey dwellings arranged in a cul-de-sac known as Richmond Garth. To the south west of Richmond Garth and to the south west and abutting site KM5 is agricultural land which is also proposed to be allocated for housing (Site KM4) in the emerging LP. According to the Council, a separate planning application (Ref 17/04308/OUTMAJ) has been submitted for determination which relates to the development of site's KM4 and KM5 for housing with access taken from Laverton Lane. The Council has commented that *"in principle this larger outline application meets the Council's objectives in seeking to develop both sites KM4 and KM5 under one coherent scheme with access taken from Laverton Lane"*.

#### AONB

9. I have no reason to disagree with the views expressed by the Council that the erection of five dwellings on the appeal site would not amount to major development in the AONB. Furthermore, I agree with the Council that it would be possible to erect five dwellings on the site without significantly compromising the scenic beauty of the AONB. I reach this view taking into account the very close relationship of the site with the existing built development on Back Lane (and to the village of Kirkby Malzeard) and to the cul de sac of dwellings at Richmond Garth. The erection of dwellings on the site would change the essentially open and rural character of the site, but the site is relatively small and any visual impacts would be largely localised.
10. In addition to the above, I note that the Council is proposing to include the appeal site as part of a wider housing allocation in the emerging LP. Whilst the emerging LP can only be afforded limited weight, given that it is at public consultation stage (statutory public consultation is scheduled to take place between 26 January and 9 March 2018), it nevertheless does indicate that the Council currently has no concerns about the development of the site (or indeed proposed site KM5) for housing from an AONB impact point of view subject to access being from Laverton Lane. I shall consider the effect of accessing the site from Back Lane upon the character and appearance of the landscape/area later on this decision, but in terms of simply erecting five dwellings on the appeal site (i.e. with no access from Back Lane), I conclude that in principle there need not be any significant conflict with the AONB aims of paragraphs 115 and 116 of the National Planning Policy Framework (the Framework) and saved Policy C1 of the Harrogate District Local Plan 2001 (LP).

### *Housing land supply*

11. There is no dispute between the parties that the local planning authority cannot demonstrate a deliverable five year supply of housing sites. The Council has provided me with an updated housing supply position (30 September 2017) which indicates that the local planning authority can demonstrate a 4.3 years supply of housing sites, including a 20% buffer. Consequently, and in accordance with paragraph 49 of the Framework, the policies for the supply of housing in the Harrogate District Local Development Framework Core Strategy 2009 (CS) (including Policies SG1, SG2 and SG3) and the LP are out of date. Consequently, these policies should be afforded only limited weight in the overall planning balance.
12. The provision of five dwellings on the appeal site represents a very positive social benefit given the housing undersupply position. This is a matter which weighs in favour of the proposal. As the aforementioned policies are out of date, it will be necessary for me to determine this appeal against paragraph 14 of the Framework which states that *"where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole"*. I deal with this matter as part of my overall conclusion.

### *Efficient use of land*

13. The appeal site forms part of a wider parcel of land which is proposed to be allocated for housing as part of the emerging LP. The Council has confirmed that such a proposed allocation has been made on the basis that access would be taken from Laverton Lane along with such an access also serving site KM5. I acknowledge that the emerging LP (including proposed housing allocation) is not yet at a very advanced stage. However, it has been the subject of some preliminary public consultation and hence has limited weight in decision making terms. I acknowledge that there are no emerging LP policies that would specifically preclude the development of site KM4 on a piecemeal or phased basis.
14. Notwithstanding the above, it is very clear that the Council is proposing to allocate sites KM4 and KM5 for housing purposes as per Policy DM1 of the emerging LP. On the basis that these sites are now proposed to be allocated for housing, I consider that it would be reasonable for the Council to require one comprehensive and cohesive planning application to be submitted for both sites. This is particularly the case as the Council has proposed to allocate site KM5 also on the basis of accessing it from Laverton Lane (i.e. not Back Lane). Furthermore, the Council states that *"the layout of KM4 should ensure there is integration and coherence with adjacent site KM5: land east of Richmond Garth"*. Such an approach has indeed been followed by way of the submission of planning application 17/04308/OUTMAJ and in my view a comprehensive approach to the development of this area constitutes good planning.
15. The appeal site includes only part of site KM5 and proposes access from Back Lane. The appellant has confirmed that he owns the remaining parcel of land which is proposed to be allocated for housing and that he *"intends that this remaining land will be developed in conjunction with the site identified as draft allocation KM4 (indeed the LPA are currently considering an application for the development of the whole for residential purposes). The intention in proposing*

*the current area was to allow the appellant to achieve a quick permission and sell the appeal site to facilitate his retirement".* Whilst I acknowledge the private intentions of the appellant, I consider that such an approach undermines the aims of the emerging LP which seeks to ensure a coherent and integrated approach to the development of site KM4 and site KM5 including access from Laverton Lane.

16. In addition to the above, the appellant has not provided me with any compelling evidence to demonstrate why the proposal should be limited to five dwellings on the appeal site and with a combined gross internal floor area of less than 1,000 square metres. I am not aware of any reason why more dwellings could not be erected on the site (and hence more floor area) without significant harm being caused to the AONB. Furthermore, I note that at pre-application stage advice was sought from the Council in respect of the development of the whole of site KM5 for housing purposes.
17. Given the quantum of development/floorspace proposed, it would mean that affordable housing provision was not required. In the context of the above, I share the concerns of the Council that the sub-division of the emerging/proposed housing allocation, by means of the submission of a planning application on part of it, as well as imposing a limit on the number of dwellings and floorspace to be provided on site, would seek to undermine efforts to efficiently deliver both private market and associated affordable housing in the Borough. I acknowledge the Council's comment that an inefficient use of the land would have the effect of putting pressure on the need to release other greenfield sites for housing in the Borough.
18. Whilst layout is a matter reserved, it is clear that the proposal is for five dwellings and for no less than 1000 square metres combined gross floor internal area. I consider that for both this reason and the fact that there is no reasonable justification for excluding part of the proposed site KM5, the proposal would make inefficient use of land.
19. Policy SG4 of the CS requires that all developments should make efficient use of land. There is no definition of what is an efficient use of land in the Framework, but Policy HS1 of the emerging LP states that density should be "*a minimum of 30 dwellings to the hectare*" with higher densities in towns and cities and urban areas with good accessibility to public transport. I accept that this is an emerging policy and so has limited weight, as a material planning consideration, in decision making terms. Nonetheless, in the context of the appeal site and the immediate area, I do not consider that a minimum of 30 dwellings to the hectare is unreasonable for the appeal site. On this basis, I would have expected a proposal for at least six dwellings based on a site area of almost 0.2 of a hectare. In respect of a housing proposal for the whole of site KM5, it is possible that this could marginally exceed 10 dwellings.
20. For the collective reasons outlined above, I conclude that the proposal would not fully accord with the efficient use of land aims of Policy SG4 of the CS and Policy HS1 of the emerging LP.

#### *Highway safety and the free flow of traffic*

21. The application is submitted in outline with all detailed matters reserved apart from access. However, the appellant has confirmed that access would be from Back Lane: the indicative plan is not detailed but appears to show a new

vehicular access into the site from Back Lane and with the demolition of an existing barn to facilitate visibility splays. In its current form, Back Lane is single tracked, narrow and does not follow a straight geometric form. There are no passing places. In its current form, Back Lane would not be an acceptable means of access. Due to its existing narrowness and absence of passing spaces, the proposal would have the effect of interrupting the free flow of traffic and would lead to oncoming vehicles having to reverse to the significant detriment of highway safety.

22. Back Lane is about 1 metre lower than the appeal site. The appellant has indicated a widening of Back Lane by about 35 metres and that it would be possible to provide the required vehicular sightlines by means of the removal of hedgerow and the provision of a new access into the site. In order to be satisfied that it would be possible to widen the road, to ensure that vehicles could safely pass, that acceptable footways could be provided and that suitable visibility splays could be provided either side of the proposed access, it would be necessary to submit very detailed access/highway proposals.
23. This is the sort of outline planning application where the local planning authority could have insisted on access being a detailed matter for consideration. However, it was also incumbent upon the appellant to have provided much more detailed indicative access details as part of the planning application/appeal including topographical and geometrical information.
24. I conclude that I have insufficient information before me to determine whether it would be possible to provide an acceptable access to and from the site without severe harm being caused to matters of highway safety and the free flow of traffic. Consequently, I am unable to conclude that the proposal would, in principle, be capable of according with the highway safety and traffic management aims of the Framework (paragraph 32) and Policy SG4 of the CS.

#### *Access and character and appearance*

25. Whilst I have concluded that I have insufficient information to determine whether it would be possible to ensure a safe and acceptable access to and from the site, it is evident that it would be necessary, at the very least, to include road widening, the removal of hedgerow and the provision of a new vehicular access with appropriate sightlines.
26. Back Lane is very rural in character and appearance in so far that it is narrow, has no pavements, includes grass verges, does not follow a straight geometrical form, is inconsistent in terms of its width and has a long and essentially unbroken hedgerow running down one side including the boundary of the appeal site. These attributes add positively to the distinctive character and appearance of the area and have the effect of providing a soft and more rural edge to the otherwise more built up development to the north. Indeed, I note recommendation T3 of the Kirkby Malzeard Village Design Statement (Design Statement) which states "*the back lanes have a rustic character which should be preserved. Measures should be taken to prevent them from becoming 'rat runs' for through traffic*".
27. Whilst I have not been provided with very detailed access proposals, I consider that even if it were possible to provide a safe and acceptable access from Back Lane, this would have the effect of significantly detracting from the aforementioned and locally distinctive character and appearance of the area.



28. I acknowledge that the site is proposed to be allocated for housing in the emerging LP. However, in planning terms it would be possible to access the site from Laverton Lane (the Council raise no objection to such a proposal) and in this regard there would not be the same harm caused to the environment on Back Lane. The retention of the existing hedgerow along Back Road, and the provision of one access road from Laverton Road to serve housing development at both sites KM4 and KM5, would have the effect of minimising the visual effects of the proposed built development when viewed from Back Lane. I note the appellant's point that a new/re-aligned hedge could be planted further into the site, but this would take a long time to reach maturity and, furthermore, would seek to unacceptably change the character and appearance of this part of Back Lane which includes a meandering and narrow rural road immediately bounded on one side by an attractive, established and almost continuous hedge.
29. Back Lane falls within the AONB and in my view its very rustic and rural appearance, including the provision of a long and attractive hedgerow, adds positively to the character of this part of the designated area. Access would be required from Back Lane and for the reasons outlined above, I find that there would be conflict with Policy SG4 of the CS which states that development proposals should be well integrated with the spatial qualities of an area and appropriate to the form and character of a settlement.
30. Notwithstanding the fact that I do not have exact details of the means of access, the likely loss of hedgerow, coupled with the formation of a new and very engineered access from Back Lane, leads me to conclude that there would also be conflict with the AONB design aims of saved Policy C1 of the LP which states (criteria E) that *"where development is permitted, the highest standards of design will be required which should reflect the local distinctiveness of the area"*.
31. For the collective reasons outlined above, I conclude that the proposal would cause significant harm to the character and appearance of Back Lane. Therefore, the proposed access would not accord with the design aims of Policy SG4 and EQ2 of the CS; saved Policy C1 of the LP; the Design Statement and the Framework.

#### *Bio-diversity*

32. Whilst layout is reserved for a future application, both the indicative layout plan and the accompanying planning application documents indicate that the existing on-site barn would be demolished. Furthermore, it would be necessary to remove at least some of the hedgerow alongside Back Lane to facilitate safe access into the site. The appellant initially commented that he did not have any knowledge of any bats, owls, birds or any other protected species on the site. I agree with the Council that at this stage, it was necessary for ecological surveys/reports to be carried out/completed by a qualified expert.
33. Notwithstanding the above, and as part of the appeal, the appellant has submitted a preliminary ecology appraisal dated July 2017 and completed by Haycock and Jay Associates Consulting Ecologists. This relates to both the appeal site and the neighbouring site which is proposed to be allocated for housing in the emerging LP. An extended Phase 1 habitat survey was carried out on 3 July 2017 by Ecologist Robyn Guppy BSc (Hons) ACIEEM and Assistant Ecologist Will Steele MZool (Hons). The survey concludes that *"a small building*

*inside the north-east of the eastern field is considered to be of moderate suitability for roosting bats and mature trees within and directly adjacent to the site are of an age and size which could support features with roosting potential for bats.. In addition, habitats within the site offer potential for foraging bats, with hedgerows also providing linear features of value for commuting bats”.*

34. The survey recommends the retention of trees and hedgerows where possible and is inconclusive in terms of whether or not bats use the aforementioned building which is to be demolished. It is not clear whether the survey revealed any evidence of past bat activity in the building and indeed it states that *“the level of bat use at a building with moderate roost suitability can only be confirmed following a minimum of one dusk emergence and one dawn re-entry survey”*. This would need to take place between May and September.
35. In the absence of the submission of dusk/dawn bat surveys, I am unable to conclude that the proposal would not have a significant impact upon biodiversity. Furthermore, it is very likely that the proposal would require the removal of hedgerow along Back Lane to facilitate safe access into the site. I consider that further survey information is required in respect of the potential use of the hedgerow by bats and whether any possible adverse impacts could be addressed by means of specific mitigation. I note that the survey recommends *“that hedgerows within the site are retained due to their value for commuting bats”*. The removal of hedgerow to facilitate access into the site would conflict with such a recommendation. This adds to the overall uncertain position relating to the impact of the proposal upon matters of biodiversity.
36. I conclude that I have insufficient information before me to determine whether the proposal would accord with the biodiversity aims of the Framework (paragraph 118).

### **Other Matters**

37. I have taken into account representations made by other interested parties. Some of the comments made have already been addressed in my reasoning above.
38. I note the comments made by the occupier of Dale Cottage in respect of the junior school and its capacity. I do not know if the junior school is oversubscribed and, in any event, the Council has commented that as the proposal is for less than 25 dwellings it would not be necessary for the proposal to include a financial contribution towards education provision. I do not doubt that the effect of emerging housing allocations upon education provision is a matter that will be considered fully as part of the emerging LP.
39. I acknowledge comments made about problems with drainage in the area. However, had the proposal been acceptable in all respects this is a matter that could have been addressed by means of the imposition of a planning condition.
40. None of the other matters raised outweigh or alter my overall conclusion on the main issues.

### **Planning balance and conclusion**

41. There is no objection from the Council to the development of the site for housing in land use principle terms and in fact the site is allocated for housing in the emerging LP. The proposal would seek to boost the supply of housing in

the Borough in the context that the local planning authority cannot demonstrate a deliverable five year supply of housing sites. This is a positive social matter to weigh in the overall planning balance albeit that the provision of five dwellings would make only a small contribution to the supply of housing.

42. I have no reason to disagree with the Council that Kirkby Malzeard has a reasonable number of day to day facilities and services and that the site would be accessible to reasonable public transport provision. Therefore, the occupiers of the proposed dwellings would not be totally reliant upon the private motor vehicle for all activities. The proposal would not amount to major development in the AONB. In land use principle terms (and setting aside issues relating to accessing the site from Back Lane), only limited harm would be caused to the beauty and landscape character of such a designated area.
43. The proposal would not amount to an isolated form of development in the countryside and I do not doubt that the occupiers of the proposed dwellings would seek to maintain and enhance the vitality of facilities and services in Kirkby Malzeard contributing positively to the local economy. Moreover, the proposal would deliver some employment at construction stage albeit that this would be short lived.
44. The above social, environmental and economic factors weigh in favour of allowing the proposal. However, these positive matters have to be weighed against a number of adverse impacts including the fact that the proposal would not seek to make efficient use of land and so would be at odds with the aims of the CS and the emerging LP. This would be in the context of a housing undersupply position and where there is a need to boost the supply of housing in the Borough.
45. I am not certain whether a proposal which made more efficient use of land (including the use of the remaining parcel of land within site KM5) would result in the provision of affordable housing: I have not been provided with detailed information relating to affordable housing need or indeed local affordable housing policies. However, the current proposal excludes the potential for affordable housing provision as the five dwellings would have less than 1000 square metres combined gross floor internal area. Affordable housing provision is not therefore a social matter which I can positively weigh in the balance.
46. Whilst the emerging LP is not yet at an advanced stage, and hence has limited weight in decision making terms, it is nonetheless a material planning consideration to weigh in the overall planning balance. The proposal would conflict with the emerging aims of draft housing site allocations KM4 and KM5 in so far that there is little evidence to demonstrate an integrated and coherent approach across the two sites. In any event, it is proposed to form an access from Back Lane which would be at odds with the Council's emerging vision for the area which is to see the above proposed allocated sites accessed from Laverton Lane. In this case, access would be from Back Lane and I have concluded that this would cause significant harm to the character and appearance of this environment.
47. In addition to the above, I have been provided with insufficient access and ecological information/details and so am unable to reach an overall conclusion in terms of whether it would be acceptable to develop the site for housing without unacceptable harm being caused to matters of highway safety/ the free flow of traffic and biodiversity. Even if I had been able to reach a certain and



acceptable conclusion relating to biodiversity matters, this would not have altered my overall conclusion that the proposal would not be acceptable in planning terms.

48. I conclude that collectively the above adverse impacts of the proposal would significantly and demonstrably outweigh the aforementioned benefits. Therefore, the proposal would not deliver a sustainable form of development. Consequently, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*Daniel Hartley*

INSPECTOR