



Appeal Decision

Site visit made on 2 April 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10th May 2019

Appeal Ref: APP/E2734/W/19/3220276

The Grange, Back Lane, Kirkby Malzeard HG4 3RY

- 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 & Mrs N Thompson against the decision of Harrogate Borough Council.
 - The application Ref 18/01600/OUT: Application No 6.24.273.OUT, dated 18 April 2018, was refused by notice dated 12 July 2018.
 - The development proposed is the erection of up to 5 no. dwellings with access considered.
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 5 dwellings with access considered at land adjacent to The Grange, Back Lane, Kirkby Malzeard HG4 3RY subject to the conditions set out in the Schedule below.

Preliminary Matters

2. The application form and the Council's decision notice describe the appeal site as being at 'The Grange', which is a detached dwelling accessed from Back Lane, and is the given address of the appellants. The appeal form however confirms that the site address is not the same as the appellants' address, and so the permission hereby granted clarifies that it relates to land adjacent to The Grange.
3. The proposed development is Schedule 2 development for the purpose of the Town and Country Planning (Environmental Impact Assessment) ('EIA') Regulations 2017. No screening opinion was issued by the Council. On 19 February 2019 the Secretary of State determined that the proposed development was unlikely to result in significant environmental impacts and so directed that EIA was not required.

Main Issue

4. The main issue arising in the appeal is the suitability of the appeal site for housing, having regard to the effects of the proposed development on the character and appearance of the area and having particular regard to its location within the Nidderdale Area of Outstanding Natural Beauty ('AONB').

Reasons

The site and surroundings

5. The appeal site comprises the northern half of a rectangular field situated to the south of Back Lane in Kirkby Malzeard, a rural village lying around 6 miles to the north west of Ripon and around 5 miles to the south of Masham. The field lies behind a mature hedgerow adjoining Back Lane and slopes up from north to south to the east of The Grange, which is a large detached dwelling set in substantial grounds. It is presently enclosed by trees and hedgerows on all sides, with a field gate to the north, to Back Lane, and a side access gate from The Grange. To the east of the appeal site lies a further detached property, 'Coverdale', to the south of which a small development of detached dwellings is under construction.
6. Back Lane is a narrow single track lane, mostly subject to an east-west one-way vehicular restriction, running parallel with the main road passing through the village. There is some development to the south of it. A group of properties, including those under construction behind 'Coverdale' and those beyond it adjoining the south-bound road out of the village, lie to the east, and then to the west beyond The Grange there is a substantial estate development at St Andrew's Meadows and a further crescent development at The Green beyond that. The Grange sits between two undeveloped fields, the western one having the appearance of a long but quite narrow paddock, and the eastern one forming the field which includes the appeal site. Beyond the development at The Green lies a playing field and then further agricultural fields, although the evidence of some of the representations on the appeal is that planning permission has recently been granted for a housing development of up to 37 dwellings on part of this land.

Designation and policy background

7. The whole village lies within the north-eastern part of the Nidderdale AONB, an extensive landscape designation adjoining the Yorkshire Dales National Park to the west and whose principal settlement is Pateley Bridge, to the south west of the village. Paragraph 172 of the National Planning Policy Framework of February 2019 ('the Framework') states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues.
8. Policy SG4 of the Harrogate Core Strategy adopted 2009 ('CS') resists the loss of greenfield land, and requires new development to be appropriate to landscape character, with visual amenity protected and where possible enhanced. Saved Policy C1 of the Harrogate District Local Plan adopted 2001 and Selective Alteration adopted 2004 ('LP') gives priority to the conservation of the natural beauty of the landscape within the Nidderdale AONB. Development should wherever possible be located in or adjacent to existing settlements, and will not be permitted where a significant adverse impact on the landscape would result. Developments in the open countryside (that are not large scale) will, subject to achieving high design standards, be permitted for certain specified purposes, including contributing to the rural economy, and where other criteria are met. Saved Policy C2 requires the protection of existing landscape character.

9. The relevant Landscape Character Assessment ('LCA'), approved in February 2004, relates to an area of 5.85km² within the AONB including the village and appeal site. It identifies the loss of field boundaries as a pressure, and that expansion of the village to the rear of existing houses would be detrimental to the historic linear character of the setting.
10. The Council's Village Design Statement ('VDS'), adopted as Supplementary Planning Guidance in June 2002, records that the village is positioned in an east/west direction and is predominantly a cross or sword shape. Historically, the properties lying to the north of Back Lane would largely look onto open linear fields to the south in a 'toft and croft' arrangement, as those lying to the south of the back lane on the northern side of the village largely continue to do. In this arrangement, Back Lane has historically formed the natural boundary between the village and the open countryside to the south. The VDS notes that post-war development had followed a different pattern from this previous linear grain, and that some developments had introduced cul-de-sac style executive estates, including part of the developments to the south of Back Lane. The recommendations of the VDS exhort a traditional linear settlement pattern without further encroachment into the countryside.

Assessment

11. Nonetheless, the departure from the historic linear pattern of development has informed the current character of this part of the village. Although layout is a reserved matter, the proposed development of 5 dwellings is unlikely to be accommodated as a linear pattern fronting onto Back Lane, and the indicative plan suggests an arrangement of 5 detached dwellings in a cul-de-sac. The appeal site is presently surrounded by residential dwellings on 3 sides, and the proposed dwellings would effectively 'infill' the land between Coverdale, with the current development to the south of it, and The Grange itself and accordingly would round off the settlement. Overall, given the developments both existing and under construction nearby, I do not consider that the grain of the settlement would be unduly disturbed by the proposed development because the former linear character of this part of the village has in large part already been lost. The land to the south of Back Lane is now considerably developed in a non-linear form.
12. The appellant's Landscape and Visual Impact Assessment ('LVIA') finds the overall impact of the development on the landscape character of the area to be minor. I concur with the findings that the change from 3 of the 4 viewpoints assessed (from the southern public footpath and from the cemetery) would be neutral. The upper parts of The Grange are perceptible from some parts of the public footpath, but the extensive screening by vegetation and the topography of both the site and the land crossed by the footpath mean that the proposed dwellings, if appropriately designed, would be barely perceptible, if at all. Approaching the village on the road from the south, the conspicuous new dwellings to the south-east of the appeal site would mean that the proposed development would not increase the prominence of the village edge in this location.
13. A noticeable change would however be perceived from Back Lane itself, and from the properties to the north of it as well as those to the sides. The 'croft' pattern of linear fields, of post-mediaeval origin, stretching away from Back Lane would be affected by the provision of housing, and the Council raises a

concern that this would damage the historic character of the village by erasing both the historic field pattern and the connection of the countryside to the historic core of the village. The appeal proposal would retain the existing hedgerows to the eastern and western sides of the appeal site, and in this respect the legibility of the historic crofting pattern would not be altogether lost. The wider field pattern in the landscape character area would remain, and the development of the appeal site would represent a minimal incursion into the overall scale of the landscape, with other strong examples of the rectilinear field pattern continuing to abut the village.

14. I saw on my site visit that there was some recreational pedestrian use of Back Lane by dog walkers, and a network of public footpaths is accessed from the western end of Back Lane. The appeal site is set up from the road behind a hedgerow for much of its frontage, but the whole field can be seen from the field gate. This aspect would change significantly as a result of the development, although could be mitigated to some degree by sensitive landscaping treatment.
15. However, it is a very localised view. The site is surrounded by development on three sides, and also to the south east, and has an intimate connection with the village. The proposed dwellings would be sited alongside, and/or to the north of, the existing properties at Coverdale and The Grange, and would be well-related to the existing built form of the settlement. Therefore I do not anticipate, as does the Council's landscape architect, that the impact of the proposed development would be 'major adverse'. Some localised moderate harm would result.
16. Applying the development plan to these findings, the Council's position is that, although there is presently an adequate supply of housing, its current 'development limits' policies do not cater for the projected housing needs and so are considered to be out of date and attract no more than limited weight. Therefore the principal policies applicable are those relating to landscape character. The appeal site lies beyond but adjacent to the village settlement boundary shown in the VDS. Given this location, and the lack of any significant adverse effect on the landscape, the development would be consistent with LP Policy C1 criteria (a) and (b). Criterion C1(c) applies to developments in the open countryside, requiring them to contribute to the rural economy or meet other specified criteria. No evidence has been provided on this point, but I consider that some local economic contribution from the building and subsequent residential use of 5 dwellings would be likely. Therefore I find no overall conflict with Policy C1. Criterion C1(d) is inapplicable, and compliance with criterion (e) can be satisfactorily achieved at the reserved matters stage. Although the proposed development would, by building on a field to the rear of the village, depart from the guidance in the LCA and the VDS, the overall landscape character would be conserved and there would be no conflict with Policy C2.
17. Turning to Policy SG4, the scale, layout and design (appearance) of the development are all reserved matters, as is landscaping, but the density of 5 dwellings on this 0.32ha site would be considerably lower than that in the historic core of the village. However, the site is adjoined to the west by The Grange which is set in extensive grounds, and to the east and south east by Coverdale and other detached dwellings of significantly lower density than the village centre. The proposed density appears consistent with this neighbouring

development and appropriate for the area, so would be compliant with CS Policy SG4 in this regard. Overall, although there would be some moderate localised harm to the views from Back Lane, this is not so significant as to conflict with the development plan for the area in respect of landscape character.

18. There would potentially remain a conflict with other areas of the development plan, particularly CS policies SG3 and SG4 insofar as they seek to restrict development to the confines of existing settlements and to avoid the loss of greenfield land. I have no grounds to disagree with the Council that these policies are not up to date because they do not accommodate the projected local housing need for the area. Considering paragraph 11 of the Framework, I have attached great weight to the conservation of the natural beauty of the AONB, but find that the limited harm to it does not provide a clear reason for dismissing the appeal. Assessed against the policies in the Framework as a whole, I do not consider that the localised harm to landscape character would significantly and demonstrably outweigh the benefits of the proposal, which are to provide up to 5 dwellings in support of the Government's objective of significantly boosting the supply of homes. In such circumstances the Framework encourages the grant of permission. CS policy SG4 does not resist the loss of greenfield or countryside sites where granting permission would accord with national policy, and accordingly there is no overall conflict with the development plan.

Other matters

19. The Council raise no other objections to the proposal, subject to the imposition of conditions, but a number of concerns have been raised in relation to the effect on the setting of The Grange, said to be a listed building, and in relation to highway safety and the amenity value of Back Lane, drainage, the impact on protected trees and wildlife, and the living conditions and outlook of neighbouring residents.
20. As to The Grange, I have not been provided with any evidence that it appears on the statutory list. It is adequately separated from the appeal site by a substantial existing hedgerow and its setting would be unaffected. As to highway safety, drainage, trees and ecology, statutory and professional consultees have raised no objections subject to the imposition of a number of conditions, which I deal with below. In the absence of any countervailing professional opinions, I accept what they have to say.
21. Apart from consideration of the access, the proposal is in outline form with only an indicative layout provided. The appellants' statement confirms that the proposed dwellings would be 2 storeys high with ridge lines no higher than those of adjacent properties. I agree with the Council that the site is capable of being developed in a way so as not to compromise the privacy, outlook or living conditions of neighbouring occupiers, and so as not to appear overbearing.
22. There would be some change to Back Lane, as the hedgerow would be removed and replaced further south to enable the road to be widened as the site is accessed. I do not consider that its amenity value would be significantly reduced as a consequence. Therefore none of the other matters raised in representations constitute sufficient grounds to warrant dismissing the appeal.

Conditions

23. The Council has suggested several conditions, with which the appellants mostly agree. Access is considered at this stage, and not left to reserved matters. The visibility splay, stipulating measurements, is required by the local highway authority. An additional condition is needed to require the submission of reserved matters for approval. Several of the suggested conditions have been amended for clarity. Some of the conditions proposed by the local highway authority refer to a published 'Specification' and to 'Standard Details'; however, these specifics are not in evidence before me and so I have left those details to be approved by the local planning authority. The extensive proposed contamination and tree protection conditions have been replaced by simpler forms.
24. The conditions suggested by the Council are mostly necessary in the interests of avoiding land contamination risks, securing the safety of the highway, securing the proper disposal of surface water, to protect nature conservation interests, to avoid harm to protected trees, promote the sustainable use of vehicles and to protect the interests of nearby residents. I have however amended the proposed condition concerning replacement and new hedgerows. It is necessary to require and control the replacement hedgerow to the northern frontage of the site as part of the access arrangements that fall for consideration at this stage. Additional controls are necessary in the event that the hedgerow should fail during its first few years. The proposed boundary hedgerow to the rear of the site, however, falls within the remit of the overall landscaping treatment of the site that is to be considered as a reserved matter, and accordingly I have omitted that aspect of the Council's proposed condition.

Conclusion

25. For the above reasons I consider the proposed development complies with the development plan for the area and, subject to the imposition of the conditions set out below, the appeal is allowed.

Laura Renaudon

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) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.
- 5) Except for investigative works, there shall be no excavation or other ground works or depositing of material on the site before the access to the site has been set out and constructed in accordance with details previously submitted to and approved in writing by the local planning authority, to include the following:
 - (i) the provision of a footway between the visibility splay and the existing highway;
 - (ii) the crossing of the highway verge and/or footway;
 - (iii) measures to prevent surface water from the site discharging onto the highway;
 - (iv) surface measures to prevent loose material from being capable of being drawn onto the highway.
- 6) Except for the purposes of constructing the initial site access, there shall be no access or egress by any vehicles between the highway and the site before splays are provided giving clear visibility eastern corner of 2.0 metres x 22 metres measured along the channel line of Back Lane. Once created these visibility splays shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 7) Except for investigative works, there shall be no excavation or other ground works or depositing of material on the site before details of:
 - (i) Vehicular access;
 - (ii) Vehicular parking;
 - (iii) Vehicular turning arrangements; and

(iv) Manoeuvring arrangements

have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

- 8) There shall be no access or egress by any vehicles between the highway and the site before details of the precautions to be taken to prevent the deposit of mud, grit and dirt on the highway by construction traffic have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 9) There shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material before details of:
 - (i) On-site parking for staff and contractors; and
 - (ii) The storage of on-site materialshave been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 10) Development shall not commence before the details for draining the surface water from the site have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details. Discharge to the public sewer shall be avoided where feasible and if exercised the approved details shall include measures to restrict the discharge rate.
- 11) Any hedgerow or shrub removal shall be undertaken outside of the main bird nesting season (i.e. cleared between September and February inclusively) unless a pre-commencement check by a suitably experienced ecologist has confirmed that no active nests would be disturbed by the works.
- 12) No removal or surgery shall be undertaken to the mature trees (T1 and T2) identified in the Smeedon Foreman Ecological Appraisal as supporting bat roost potential before a bat survey has first been undertaken and any necessary mitigation agreed in writing with the local planning authority, and carried out in accordance with any such mitigation.
- 13) Before the dwellings hereby permitted are occupied, a replacement hedgerow shall be planted to the northern frontage of the development, located so as not to obscure the visibility splays. Should any part of the hedgerow die, be removed, or become seriously damaged or diseased within 5 years of planting it shall be replaced in the next planting season with plants of similar size and species.
- 14) Before the dwellings hereby permitted are occupied, two integrated bat tubes and two integrated swift bricks shall be erected on the southern, eastern or western elevations of each dwelling between 3 and 5 metres

above ground level or close to roof lines and away from sources of direct lighting.

- 15) No site clearance, preparatory work or development shall take place until a scheme for the protection of trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction – Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of trees shall be carried out as approved.
- 16) A detailed scheme for landscaping, including the planting of trees and shrubs shall be submitted to the local planning authority as part of the submission of reserved matters. The scheme shall specify types and species, a programme of planting and the timing of implementation of the scheme, including any earthworks required.
- 17) Before the development is brought into use a scheme detailing the facilities that will be provided for charging electric vehicles and other ultra-low emission vehicles shall be submitted to and approved in writing by the local planning authority. The dwellings hereby permitted shall not be occupied until any such facilities, which shall thereafter be retained, are installed and operational.
- 18) Construction works shall take place only between the hours of 0800 and 1800 on Mondays to Fridays and 0800 and 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.