
Appeal Decision

Site visit made on 13 June 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 28 July 2016

Appeal Ref: APP/C2708/W/16/3144561

Land south of Shires Lane, Embsay, North Yorkshire, BD23 6SB

- 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 The Trustees of the Chatsworth Settlement against the decision of Craven District Council.
 - The application Ref 26/2015/15886, dated 5 June 2015, was refused by notice dated 25 September 2015.
 - The development proposed is described as "residential development with access from Embsay Lane".
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Decision

1. The appeal is allowed and planning permission is granted for residential development with access from Shires Lane at land south of Shires Lane, Embsay, North Yorkshire, BD23 6SB in accordance with the terms of the application, Ref 26/2015/15886, dated 5 June 2015, subject to the conditions in the attached schedule.

Procedural Matters

2. The description of development given in the heading above is taken from the planning application. However, it is clear from the submitted documentation and the Council's decision notice that the reference to Embsay Lane is incorrect. Accordingly, I have used the correct road name in my formal decision.
 3. The planning application was submitted in outline with all matters other than access reserved. I have dealt with the appeal on that basis. A layout plan was submitted with the planning application showing a development of 39 houses on the site. I have treated this as being for indicative purposes only.
 4. The decision notice indicates that the Council has more than a five year supply of residential development land. However, in its appeal documentation the Council indicates that the position in relation to housing land supply has changed since it issued the decision and that it is now unable to demonstrate a five year supply of housing land which is compliant with the National Planning Policy Framework (the Framework). The Council indicates that in accordance with the advice of the Framework the relevant policies for the supply of housing should not be considered up-to-date and that the proposal should be considered in the light of the advice of paragraph 14 of the Framework. The Council indicates that its primary concern is the visual impact of the development and that it considers that in the overall planning balance, the
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harm caused in this respect would significantly and demonstrably outweigh the benefits, including the provision of market and affordable housing and the economic benefits this can bring.

Main Issues

5. Taking into account the above and the evidence before me, I consider that the main issues in this case are:
- the effect of the proposed development on the character and appearance of the area, including the landscape and the setting of Embsay Conservation Area; and
 - whether in the overall planning balance the proposal would represent sustainable development in terms of the Framework.

Reasons

Planning Policy context

6. Policy ENV1 of the Craven District (Outside the Yorkshire Dales National Park) Local Plan 1999 (CDLP) indicates that the character and quality of the open countryside will be protected from being spoilt by sporadic development by defining development limits. It goes on to indicate that development within the open countryside will be restricted to small scale development appropriate for the enjoyment of the scenic qualities of the countryside and other appropriate small scale development having a rural character where it meets certain criteria.
7. The appeal site lies adjacent to but outside the development limits of Embsay. Therefore, it lies within the open countryside for planning policy purposes. The proposal for housing development within the countryside would be contrary to policy ENV1 of the CDLP. However in this case the development boundaries defined in the Local Plan are fundamental to delivering the housing numbers for the plan period which was up to 2006. Policy ENV1 in restricting development in the open countryside has the effect of constraining the supply of housing. Therefore, I consider that it is a policy for the supply of housing. The Council is unable to demonstrate a five year supply of housing land. Accordingly, in line with the advice at paragraph 49 of the Framework, policy ENV1 of the CDLP cannot be considered to be up-to-date.
8. The Council is in the process of preparing a new Local Plan. I note that the appeal site is identified within the pool of site options which was agreed for consultation as part of this process on 4 April 2016 by the Council's Spatial Planning Sub Committee. However, I attach little weight to this given the early stage in the preparation of the new Local Plan.

Character and appearance

9. The appeal site is an area of pasture land to the south of Shires Lane adjacent to its junction with Low Lane. Shires Lane forms the edge of the settlement of Embsay and runs along the northern edge of the site. Low Lane runs along the eastern edge of the site and to the west the site adjoins Embsay Cricket Club. To the south the site adjoins open fields with the Embsay Steam railway line and Skipton Quarry beyond.

10. The Council indicates that the site is located within a landscape which is characterised as a 'Semi-enclosed Intermediate Landscape of Pasture with Wooded Gills and Woodland' in the Craven District Council Outside the Yorkshire Dales National Park and the Forest of Bowland AONB Landscape Appraisal 2002 (Landscape Appraisal). However, the influence of the railway line and the imposing face of the quarry to the south and the settlement of Embsay to the north and west, including the cricket ground, serve to reduce the quality of this landscape in the vicinity of the appeal site.
11. The Council contends that the appeal site has a distinctly rural aspect and forms a transitional area of land between the wider open countryside and the existing residential development on Shires Lane. However, this in itself does not indicate that the site is of such intrinsic countryside character and beauty as to merit its retention in its current form.
12. The appeal site, which has a slight gradient from the north to the south and a mound on the east boundary, is enclosed by dry stone walls to the north, west and east and partially to the south. There is only one tree on the site although there are a number of trees alongside the dry stone wall which forms the western boundary of the site, the trees being on the cricket club site. There is also a line of poplar trees outside of the site next to the dry stone wall along the western section of the southern boundary. Accordingly, the site is situated in a relatively enclosed landform which is both physically and visually disconnected from the wider landscape setting which comprises of undulating pasture land to the east on the other side of Low Lane and the relatively steeply sloping land to the south to the railway.
13. In so far as the appeal proposal would result in built development on the site where there is currently none, it would inevitably result in the urbanisation of the site and project built development into the open countryside. The development would be visible within the immediate vicinity of the site including from Low Lane, Shires Lane and the footpath off Low Lane. However, as I saw from my site visit, when I viewed the site from a number of other viewpoints, the development would not be visible over a wide area. From a number of viewpoints the development would not be visible whilst in others it would only be visible in a narrow field of view and at distance where it would be seen in the context of the existing built form of Embsay. Accordingly, it would not appear overly prominent or as an unduly incongruous incursion into the wider open countryside. Any visual harm would be very much localised and in the longer term, planting within the site and along its boundaries would serve to integrate the proposal into the local landscape. Notwithstanding that the identification of the site as a potential housing site within the emerging Local Plan is afforded little weight in my consideration of the appeal, I note that the Council indicates that its identification provides an indication that the potential impact of development on the site is considered to be limited and less intrusive than other sites that have been under consideration as part of the Strategic Housing Land Availability Assessment.
14. The appeal site is located outside the Embsay Conservation Area, the boundary of the conservation area running part way along Shires Lane to the west of the site beyond the cricket ground on the opposite side of the road. The conservation area comprises the historic settlement of Embsay and is characterised by stone terraced properties dating from the late 18th and 19th

- centuries. The surrounding rural landscape is important to the setting of the village and the conservation area.
15. The Framework indicates at paragraph 129 that an assessment of the significance of any heritage asset that may be affected by a development proposal is required, including any contribution to significance made by their setting.
 16. The effect of the proposed development on the setting of the conservation area does not form part of the reason for refusal. Furthermore, in its appeal statement the Council states that whilst the open spaces surrounding the village centre contribute to its overall character it is debateable whether development in the location proposed would result in an adverse impact that would affect the significance of the conservation area to an unacceptable degree. However, it also refers to a draft Embsay Conservation Area Appraisal (ECAA) which indicates that the open land to the south of Shires Lane makes a strong contribution to the character and appearance of the conservation area.
 17. The ECCA is currently in draft form only and, as acknowledged by the Council, does not have any formal status. The proposed development would not be visible from the majority of the conservation area and any views of it from the nearest part of the conservation area at its south eastern corner on Shires Lane would be limited, the appeal site lying as it does beyond the cricket ground. I am also mindful that the Council indicates that the recently approved housing development on that part of the open land to the south of Shires Lane, west of the cricket ground and immediately adjacent to the conservation area, would have a significant impact on the value of the undeveloped frontage of Shires Lane in terms of its contribution to the character of the village and more specifically the heritage asset of the conservation area.
 18. It seems to me therefore that given the degree of separation between the appeal site and the conservation area, any significance that the conservation area derives from its setting would not be diminished by the proposed development and I find no harm in this regard. Furthermore, the appeal proposal is in outline with all matters other than access reserved. Therefore, the scale, appearance and layout of the development could be controlled so as to ensure that it would be consistent and in-keeping with that within Embsay and more specifically within the conservation area.
 19. To conclude therefore, I find that the proposal would cause no harm to the setting of the Embsay Conservation Area and whilst it would permanently extend built development into the open countryside, any visual harm to the landscape would be localised. Accordingly, overall any harm caused by the proposal to the character and appearance of the area would be minimal.

Sustainable development/Planning Balance

20. Paragraph 7 of the Framework sets out three dimensions of sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform an economic, social and environmental role. These roles are mutually dependent and should be jointly sought.
21. In terms of the economic and social role, the main parties agree that the appeal proposal would provide economic and social benefits. With regard to

the economic role it would provide housing, initially bringing employment opportunities during the construction of the houses and then providing homes whose occupiers would contribute to the local economy. Whilst there may be few employment opportunities within Embsay it is not an isolated community and has access to the wide range of services and facilities in nearby Skipton. The proposal would also contribute financial benefits through the New Homes Bonus and additional Council Tax income.

22. Concerning its social role the appeal proposal would provide open market and affordable housing which would contribute to the supply of housing to help meet the housing needs of the present and future generations in an area where there is not a demonstrated five year supply of housing land in accordance with the Framework. It would also make provision for local open space.
23. Interested parties indicate that local services and facilities within Embsay are somewhat limited. However, I also note that the Council indicates that in locational terms the site is sustainably located. Given that most services and facilities are available in Skipton which is nearby and is served by a bus service from Embsay, it seems to me that the proposal would accord with the advice at paragraph 55 of the Framework that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Having regard to the above therefore, I accord the social and economic benefits significant weight in favour of the proposal.
24. In terms of the environmental dimension of sustainable development the Framework indicates that the environmental role includes contributing to protecting and enhancing our natural, built and historic environment. The appeal proposal would extend built development into the open countryside. However, any visual harm to the landscape would be localised and there would only be minimal harm to the character and appearance of the area.
25. Accordingly, in the overall balance I conclude that the adverse impact of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. Therefore, the appeal proposal can be considered to constitute sustainable development.

Other Matters

26. Concerns have been raised regarding the incompatibility of the proposed development and the adjacent cricket ground. In this context reference has been made to two High Court judgments¹ to which I have had regard.
27. The scale and layout of the proposed development are matters that are reserved for future consideration. Therefore the proposed development could be designed so as to minimise any harm to the living conditions of the future occupiers of the dwellings from ball strike. I also note that Sport England does not object to the proposed development subject to the imposition of a condition relating to the provision of suitable ball stop netting or fencing. Accordingly, from the evidence before me I am not persuaded that the effect of the appeal proposal on the club's future ability to obtain insurance would be such as to necessarily impact on its viability.

¹ East Meon Forge & Cricket Ground Protection Association v East Hampshire District Council [2014] EWHC 3543 (Admin) and Miller v Jackson [1977] EWCA Civ 6

28. A number of third parties express concerns regarding highway and pedestrian safety. However, there is no substantive technical evidence to indicate that the proposal would cause material harm to highway safety. The Highways Authority has not objected to the proposal subject to the imposition of appropriate conditions. I see no reason to take an alternative view.
29. A number of concerns have been raised regarding the ability of local infrastructure to cope with the additional demand created by the proposed development. However, there is no evidence from the Education Authority to indicate that there is insufficient capacity at the local school. Furthermore, there is no substantive evidence to indicate that the site cannot be suitably drained subject to the imposition of suitable conditions.
30. I appreciate that local residents consider that too much housing development is being permitted in the village. However, this in itself would not justify the refusal of permission for sustainable development to meet housing needs. I also appreciate that the proposal would result in the loss of agricultural land. However, there is nothing in the evidence before me to indicate that the land is of sufficient quality to justify its retention for this purpose. The site is not within the Green Belt.
31. There is no substantive evidence to indicate that the proposal would cause material harm to wildlife. No objections were raised to the proposal by Natural England or the Yorkshire Wildlife Trust in this respect. Therefore, I see no reason to take an alternative view. The matters of appearance and layout are reserved for future consideration.
32. The matter of whether or not pre-application consultation was undertaken with the Parish Council is not a matter for me to consider or comment upon in the context of an appeal under section 78 of the above Act.

Conditions

33. The Council has suggested a number of conditions that it considers should be imposed if I am minded to approve the proposed development. I have considered both the wording and reasoning for these in the light of the Framework and the Planning Practice Guidance. I have amended, simplified and amalgamated some of the suggested wording for clarity and to ensure compliance with national policy and guidance.
34. The proposal seeks outline planning permission with all matters other than access reserved. Conditions relating to the submission of reserved matters are therefore necessary.
35. A condition is required to specify adherence to the submitted plans and documents in order to provide certainty regarding the development permitted.
36. A condition requiring the submission of a construction method statement is necessary to mitigate the impact of the construction phase on surrounding residents and in the interests of highway safety.
37. The contribution towards affordable housing is one of the benefits of the proposal which has been weighed in the overall balance. Accordingly, a condition is imposed to secure its provision either on or off-site. I have amended the wording of the Council's suggested condition to include less detail thereby allowing the parties to negotiate the detailed scheme.

38. A number of the standard highway conditions suggested by the Highway Authority duplicate the provisions of other highway conditions or are not relevant to the appeal proposal. Conditions relating to the approval and implementation of the site access details and off site highway improvement works are necessary in the interests of highway safety. The requirement for further drawings is unnecessary as the required details are covered by other conditions. I have included reference to visibility splays in the condition relating to the approval and implementation of the site access details. Therefore, a separate condition relating to visibility splays is unnecessary and a condition requiring the submission of a Travel Plan is not relevant to the appeal proposal.
39. Although not indicated in the list of suggested conditions provided by the Council in its appeal documentation I consider that as indicated in its Committee Report a condition is necessary to ensure satisfactory provision of local open space in accordance with policy SRC2 of the CDLP. I have used the wording suggested by the appellant.
40. As indicated above and detailed in the Council's Committee Report, Sport England has requested a condition requiring the provision of suitable ball stop netting or fencing in relation to the cricket field. This is necessary in the interest of the living conditions of the future occupiers of the dwellings. I have used the wording suggested by Sport England.
41. In the interests of the character and appearance of the area a condition is necessary to ensure that details of the levels across the site and the floor levels and heights of the proposed dwellings are submitted as part of the reserved matters. Details of the existing site levels were submitted with the planning application. Appearance is a reserved matter therefore the submission of building facing materials and finishes and surface material finishes is not necessary at this stage. A condition is also necessary indicating the soft and hard landscape details to be submitted as part of the reserved matters in the interests of the character and appearance of the area.
42. In the interests of highway safety a condition is necessary indicating the highway layout details to be submitted as part of the reserved matters. Conditions requiring the submission of details of foul and surface water are necessary to ensure that these aspects are satisfactory and to ensure the investigation of a sustainable urban drainage scheme.
43. The site is some distance from the railway line. Therefore a condition relating to noise from and access to the railway has not been included.

Conclusion

44. Although the proposal would be contrary to policy ENV1 of the CDLP, this policy cannot be considered to be up-to-date. I have found that the adverse impact of the proposal would not significantly and demonstrably outweigh the benefits which I have identified. Accordingly, the appeal proposal represents sustainable development and I conclude that planning permission should be granted in accordance with the presumption in favour of sustainable development. For the reasons given above and having regard to all other matters raised therefore the appeal should be allowed.

Beverley Doward 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 begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two 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 location plan no. 4653 00- 01 and access points shown on the illustrative layout plan no. 4653 00- 03 and the submitted Flood Risk Assessment, Design and Access Statement, Mitigation Measures set out in the Preliminary Ecological Assessment and Landscape and Visual Appraisal.
- 5) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - viii) delivery, demolition and construction working hours
 - ix) HGV construction traffic routing.
- 6) No development shall commence until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

- iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no affordable housing provider is involved;
- iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

OR:

- vi) details of an equivalent affordable housing contribution to be provided in lieu of affordable housing on site and the means by which such a contribution shall be provided.

The affordable housing shall be retained in accordance with the approved scheme.

- 7) No development shall take place until details of the site accesses have been submitted to and approved in writing by the local planning authority. These details shall include: the highway verge/footway crossing; the visibility splays, any gates or barriers; the gradient of that part of the accesses extending 5 metres into the site from the carriageway of the existing highway, the finished surface; measures to prevent surface water run-off onto the highway; the provision of tactile paving and a timetable for the implementation and completion of the works. The development shall be carried out in accordance with the approved details.
- 8) No development shall take place until the details of off site highway improvement works have been submitted to and approved in writing by the local planning authority. The works shall include the provision of tactile paving, the provision of a 1.2 m wide footway between the eastern access and the west end of the cricket field and a traffic calming scheme around the East Lane/Shires Lane junction. The development shall not be brought into use until the works have been implemented in accordance with the approved details.
- 9) No development shall take place until either:
 - i) full details of public open space to serve the development have been submitted to and approved in writing by the local planning authority and agreement has been reached with the local planning authority as to the provision of the same and its subsequent management and maintenance;OR:
 - ii) alternative arrangements for the provision of open space have been secured and approved in writing by the local planning authority.
- 10) No development shall commence until details of the design and layout of ball stop netting or fencing in relation to the cricket field have been submitted to and approved in writing by the local planning authority, after consultation with Sport England. The ball stop netting or fencing will be designed to meet the requirements of a risk assessment undertaken by a suitably qualified consultant and the details will include a

timetable for the construction and completion and details of maintenance responsibilities. The development hereby permitted shall not be occupied until the ball stop netting or fencing is constructed and completed in accordance with the approved details. The ball stop netting or fencing shall be retained thereafter.

- 11) The details to be submitted to and approved in writing by the local planning authority as part of the reserved matters shall include details of proposed ground levels, proposed finished floor levels and building heights. Development shall be carried out in accordance with the approved details.
- 12) The details to be submitted to and approved in writing by the local planning authority as part of the reserved matters shall include full details of both hard and soft landscape works and these works shall be carried out as approved. The details shall include a detailed scheme for the planting of trees and shrubs specifying types and species, a programme of planting and the timing of implementation of the scheme, including any earthworks required; details of hard landscaping materials, including the surfacing materials of any hard-standing, drives, footways, screen walls, fences and other means of enclosure. Development shall be carried out in accordance with the approved details.
- 13) The details to be submitted and approved in writing by the local planning authority as part of the reserved matters shall include details of vehicular, cycle and pedestrian accesses, vehicular and cycle parking, vehicular turning arrangements, manoeuvring arrangements, loading and unloading arrangements and street lighting. Development shall be carried out in accordance with the approved details.
- 14) No dwelling shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) No dwelling shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.