



Appeal Decision

Site visit made on 26 June 2023

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd November 2023

Appeal Ref: APP/P1045/W/22/3310169

Land off Biggin View, Hulland Ward, Ashbourne, Derbyshire DE6 3GY

- 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 John Yates against the decision of Derbyshire Dales District Council.
 - The application Ref 22/00008/OUT, dated 9 December 2021, was refused by notice dated 14 September 2022.
 - The development proposed is the erection of up to 15 dwellings and associated garaging.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 15 dwellings and associated garaging at Land off Biggin View, Hulland Ward, Ashbourne, Derbyshire DE6 3GY in accordance with the terms of the application, Ref 22/00008/OUT, dated 9 December 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline form with only the means of access to be determined at this stage. Matters of appearance, landscaping, layout and scale are reserved for future consideration. I have therefore treated any details within the drawings relating to matters other than access as indicative as to how the site might be developed.
3. The description of the proposed development on the planning application form is "Outline application for the erection of up to 15 dwellings and associated garaging including details of means of access". I have omitted specific reference to the outline nature of the proposal and the details of means of access from the description as they are not forms of development.
4. For the avoidance of doubt, the reference to house numbers within this decision is in accordance with my observations at the time of my site visit, rather than the plot numbers as relied upon by the main parties within their submitted evidence.

Main Issue

5. The effect of the proposal on highway safety.

Reasons

6. The appeal site is a field located adjacent to the settlement of Hulland Ward. It abuts a recent housing development, hereafter referred to as Biggin View.

Through this appeal, permission is sought for an access point to the appeal site from an existing turning head at the end of a private drive within Biggin View.

7. On approaching the proposed access point to the appeal site from Biggin View, the existing footways within this stretch of private drive terminate adjacent to Nos 19 and 27. The private drive then takes the form of a hard surface shared by a variety of road users, which may include pedestrians, cyclists, wheelchair users and motorists, with a demarcated footway for a short stretch along the southern side of the carriageway leading to the proposed point of access to the appeal site.
8. Each of the dwellings located in the vicinity of the shared space have good levels of off-street parking provision, such that I consider it unlikely that there would be significant levels of on-street parking in this location. However, at the time of my site visit there was a vehicle parked over the demarcated footway and I appreciate, therefore, that inconsiderate parking may occur at times, which would displace pedestrians and other road users into the carriageway along this stretch.
9. As set out in the Department for Transport Manual for Streets, motorists entering shared spaces will tend to drive more cautiously and negotiate the right of way with pedestrians and other road users on a more conciliatory level.
10. The combined effects of the lack of kerbing, the slight incline in carriageway height from the rest of Biggin View and the demarcated stretch of footway make drivers aware that they are crossing over a shared surface and are likely to encourage low speeds, thus creating a shared space where pedestrians and other road users can co-exist with motorists without undue risk of collision or a feeling of intimidation. Any motorists using this stretch to enter/exit the existing driveways of Nos 19-25 would also be travelling slower so as to carry out such manoeuvres.
11. Further, as evidenced by the appellant's Access Technical Note¹, total vehicle movements generated by the proposed development throughout the day and particularly during peak times would be relatively low. Even together with the vehicle movements associated with the four existing dwellings which use the private drive for vehicular access, I consider overall traffic flow would be limited.
12. Pedestrians and other road users would only be crossing the shared space for a very short stretch and motorists would be able to see any oncoming road users given its straight alignment. There would be scope at the reserved matters stage to not only ensure that satisfactory visibility along the approach from the appeal development could be achieved, but to also ensure the route could be appropriately designed, be that a change in level and/or surface material or other features, so as motorists approaching the shared space from within the development would be well aware of it and adjust their driving accordingly.
13. I note that there is generous space for pedestrians and other road users to navigate around a parked vehicle and for another vehicle to pass concurrently. I am however aware that a bay window associated with the ground floor of No 27 slightly overhangs the carriageway. Be that as it may, the opened window

¹ Report reference: ADC3090-RP-B

- would not interfere with passing vehicles which, in reality, would be travelling a distance from the edge of the carriageway, as is likely currently experienced.
14. Even in the instance where the opened window and a parked vehicle may prevent two vehicles from passing one another, at the same time that a pedestrian or other road user was traversing the carriageway, this give way arrangement is commonplace within built-up residential areas such as this. Moreover, the opened window and its perceived narrowing effect on the carriageway would further deter high vehicle speeds. It would not make the access to the appeal site any more constrained or difficult for drivers or unsafe for other road users.
 15. Drawing all of the above together, the design characteristics of the shared space and proposed access creates an environment conducive to low travelling speeds and encourages considerate use by all highway users. The likelihood of conflict would be further reduced by the low traffic flows and good visibility. Thus, I see no reason why the safety of all road users would be unacceptably compromised by the proposal.
 16. Accordingly, the proposed access to the appeal site would not give rise to an unacceptable impact on highway safety. Therefore, the proposal would accord with Policies S4 and HC19 of the Derbyshire Dales Local Plan (December 2017) which, in so far as they relate to this appeal, collectively require that developments do not generate traffic of a type or amount which cumulatively would cause severe impacts on the transport network and ensure that developments can be safely accessed.
 17. There would also be no conflict with paragraph 111 of the National Planning Policy Framework (the Framework) which requires that proposals are refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

18. I acknowledge that shared spaces can present highway safety concerns and difficulties for people with disabilities, particularly those with cognitive difficulties and people who are blind or partially sighted. I have therefore had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
19. Nonetheless, as indicated above, the design characteristics of the shared surface would provide good differentiation for vulnerable road users. In limited instances where pedestrians and other road users may have to enter the carriageway, this would only be for a very short stretch and in a place where traffic volumes and speeds would be low. Furthermore, the carriageway is not steeply inclined. I have no reason to think that it would create difficulties for access for all.
20. I have no evidence to suggest that the proposal would prevent persons with a protected characteristic from safely traversing along this stretch. Therefore,

- allowing this appeal would be consistent with the aims of the PSED to eliminate discrimination, advance opportunity and foster good relations.
21. The appeal site is located within the setting of the nearby Grade II listed Christ Church. Its significance appears to be derived from its three bay nave plan form, with projecting chancel and west tower, and its interior quality. The appeal site makes a positive contribution to its setting due to its rural and open characteristics.
 22. It seems to me that, during the call for sites, the Council determined that development at the appeal site may cause some harm to its setting however, at worst, this would likely be at the lower end of less than substantial harm. Given the intervening landscaping and distance between the heritage asset and the appeal site, along with the adjoining residential development and thus existing presence of built form, I concur with this view.
 23. In accordance with the Framework, great weight should be given to the asset's conservation and this harm should be weighed against the public benefits of the proposal. Up to 15 new dwellings, including the provision of affordable units, has the potential to deliver significant public benefits and thus I afford this matter very substantial weight. They would therefore outweigh any harm which the principle of the development and the proposed access would have on the setting of the heritage asset. Moreover, there would be potential for mitigation during the detailed design of the proposal.
 24. The Council has raised no concerns with the principle of housing in this location. It has however been suggested by interested parties that the area does not have sufficient shops and services for the increased number of residents. There is little conclusive evidence in this regard thus I cannot determine that existing infrastructure in the locality would not be able to service the development. I am therefore unable to attribute significant weight to those arguments.
 25. Concerns have been raised by third parties in respect of the use of the site by various forms of wildlife. The Council and its consultees have confirmed that they are not aware of the presence of any species or habitats of principal importance on the site and have accepted the recommendations in the appellant's Ecological Impact Assessment. A biodiversity net gain should however be achieved and this can be appropriately conditioned.
 26. It is suggested that the proposal would put residents at No 27 in danger when tending to parts of their garden adjacent the shared space, when cleaning windows or carrying out other maintenance. This arrangement would be similar to that which currently occurs. Also, the increase in vehicle movements as a result of the appeal proposal would not be so great, nor would vehicle speeds, so as to pose a significant danger.
 27. I consider that any disruption during construction of the appeal development would be for a temporary and likely limited period. The days and time of construction could be appropriately conditioned so as nearby residents are not unreasonably affected. Given the scale of the development, I consider that any comings and goings associated with construction traffic itself would not result in unacceptable harm to the living conditions or safety of nearby residents, including children traveling to nearby green spaces.

28. With regards to the housing land supply position, I do not need to consider this matter in detail as I have found that the proposal complies with the development plan.
29. Whilst concerns have been raised relating to previous car accidents on Dog Lane, the evidence before me is unsubstantiated and I do not know the precise details. Furthermore, the Council did not object on this basis. I am not persuaded that the maximum number of dwellings proposed and the evidenced number of vehicle movements, particularly in peak periods, would generate sufficient vehicular movements to unacceptably compromise highway safety in this location.
30. I note the revised option which proposed to narrow part of the existing private drive thus providing greater separation between the carriageway and No 27. However, I am not considering it as part of this proposal as it did not form part of this appeal. Moreover, I find the current scheme acceptable irrespective of any merits associated with the alternative option.
31. I do not have any substantive technical evidence to question the structural integrity of the existing shared surface and note it is clearly used by vehicles at present.

Planning Obligation

32. The appellant and the Local Planning Authority have jointly entered into a planning obligation in the form of a bilateral agreement, under section 106 of the Town and Country Planning Act 1990 (as amended). This includes obligations to provide and make contributions to affordable housing, which would come into effect if planning permission were granted.
33. I am content that the obligation and contributions meet the tests set by Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), which are also reflected at paragraph 57 of the Framework, in that they would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related to it in scale and kind.
34. The Council's consultees confirmed that there is no requirement to mitigate the impact of the proposal on education. Therefore, a financial contribution towards the provision of secondary and post 16 school places is not necessary, as has been reflected in the signed planning agreement.

Conditions

35. The Council provided a list of suggested conditions it considered should be attached if planning permission were to be granted and the appellant had an opportunity to comment on this. For clarity and precision, and to ensure compliance with the Planning Practice Guidance, I have undertaken some minor editing and rationalisation.
36. Conditions specifying the reserved matters, the time limit for their submission and the commencement of the development are all required to ensure certainty in the planning process and consistency within national policy and guidance.
37. As outline planning permission is sought with all matters apart from access reserved, the only drawings that I have conditioned are those which identify

- the site access. A condition is necessary to restrict the scale of the proposal to a maximum of 15 dwellings.
38. To reduce the risk of flooding, promote the use of sustainable drainage systems and ensure wider water quality, conditions requiring a surface water drainage scheme and a foul water strategy are required. For similar reasons, a condition requiring details of the finished floor levels to be submitted is necessary and this detail should be submitted at the reserved matters stage.
 39. I have not attached a condition requiring a verification report for the surface water drainage system to be submitted for approval as the details and timeframe included in condition 6 provide suitable triggers for enforcement, thus it is not necessary.
 40. To ensure a balanced community, a condition is required which stipulates the overall mix of housing types.
 41. It is necessary to condition the details which should be submitted as part of any reserved matters application in relation to landscaping to ensure a high-quality development which also achieves a biodiversity net gain.
 42. To ensure the private access and internal roads are satisfactorily maintained, a condition is required which secures management of the roads.
 43. A condition concerning ground contamination is necessary in the interests of public health. A condition is required which ensures climate change measures are incorporated into the development. Restricting hours of construction is necessary in the interests of the living conditions of nearby residents.

Conclusion

44. For the above reasons, the proposed development would comply with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision should be other than in accordance with it. The appeal should therefore be allowed.

H Ellison
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(s) 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 Number 01001 Revision P2 and Site Plan as proposed Number 1001 Revision P3, in so far as they relate to matters of site access.
- 5) No more than 15 dwellings shall be constructed pursuant to this permission.
- 6) No development shall commence until details of a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.
The development shall be constructed in accordance with the approved details and shall be managed/maintained in accordance with the approved maintenance and management details for the lifetime of the development.
- 7) No development shall commence until a scheme for the disposal of foul water discharge from the development and a timetable for its implementation have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme and details and retained thereafter.
- 8) The development hereby approved shall provide for the following overall mix of housing: 1 bed = 15%, 2 bed = 40%, 3 bed = 40% and 4+ bed = 5%.
- 9) Any reserved matters application concerning appearance shall include details of the finished floor levels of all dwellinghouses, which shall be at least 150mm above ground level.
- 10) Any reserved matters application concerning landscaping shall include:
 - a) A tree survey - to include all existing trees on and within 15m of the site
 - b) Tree constraints and removals plans – every surveyed tree should have its location, category grading, canopy spread and root protection area plotted onto two accurate site survey plans; the first should show the site as existing and the second should show the site as proposed
 - c) An arboricultural impact assessment –which should present an evaluation of the impact of the proposals on the existing trees
 - d) a Biodiversity Metric Assessment which demonstrates a net biodiversity gain, appropriate habitat creation and enhancement and details of future maintenance and management.The development shall thereafter be carried out in accordance with the

approved details.

- 11) Prior to the first occupation of any dwelling, details of the management arrangements for the future maintenance of all the roads, footways and shared parking areas within the site, along with an ongoing maintenance strategy and timescales for transfer to a management company, where required, shall be submitted to and approved by the Local Planning Authority. Such areas shall be maintained in accordance with the approved details.
- 12) 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 development is resumed or continued.
- 13) The development hereby approved shall incorporate measures to help mitigate the effects of and adapt to climate change. The measures and any scheme, including timetable for delivery, shall be submitted to and approved by the Local Planning Authority prior to the first occupation of any dwelling. The development shall thereafter be carried out in accordance with the approved details.
- 14) During construction, no machinery shall be operated on the site, no process or operations shall be carried out and no deliveries shall be taken at or despatched from the site except between 8:00 and 18:00 hours Monday to Friday and 9:00 and 13:00 on Saturdays or at any time on Sundays and Bank Holidays.

End of schedule