



Appeal Decision

Site visit made on 24 May 2022

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/G2713/W/21/3289607

Tennis Court Lane, Tollerton YO61 1QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ambleside Homes against the decision of Hambleton District Council.
 - The application Ref 20/02752/FUL, dated 4 December 2020, was refused by notice dated 4 October 2021.
 - The development proposed is construction of 4no. dwellings and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 4no. dwellings and associated works at Tennis Court Lane, Tollerton YO61 1QB in accordance with the terms of the application, Ref 20/02752/FUL, dated 4 December 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Ambleside Homes against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Council's decision refers to the Core Strategy and Development Policies Local Development Framework Development Plan Documents. These have been superseded by the Hambleton Local Plan, adopted 2022 (the Local Plan). The Council's officer report referred to the Local Plan as emerging at the time. The Council referred to the Local Plan in its statement, which the appellant has seen. I have referred to the Local Plan in my findings.
4. The Council's statement identifies that Local Plan Policy E3 requires all development to demonstrate the delivery of net gain for biodiversity, and had the Local Plan been adopted at the time of the determination of the planning application, it is reasonable to conclude that the lack of evidence about whether the proposed development would achieve a net gain in biodiversity would have formed a reason for refusal. The adoption of the Local Plan is a material change in circumstances since the issuing of the Council's decision and so I have taken this matter into account in my decision.
5. A Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 was submitted as part of the appeal. The UU restricts the use of defined land and buildings at Japonica House in the interests of noise or other disturbances.

6. An amended proposed site plan was submitted with the appeal. This corrects a technical point concerning how the proposed visibility splay is recorded and shown. It does not change the site layout although it does realign the hedge to plot 4 out of the visibility splay. The Council's position is that no prejudice would occur if the amended plan was accepted. The proposed development would not be so changed by the amended plan that to consider it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. I have therefore taken account of this amended plan in my decision.

Main Issues

7. The main issues are:
- the effect of the proposed development on highway safety with particular regard to pedestrians;
 - whether acceptable living conditions for future occupiers would be provided, with particular regard to noise and disturbance; and
 - whether or not it has been satisfactorily demonstrated that the proposed development would have an acceptable effect on biodiversity, having particular regard to biodiversity net gain.

Reasons

Highway Safety

8. The appeal site would be accessed from Tennis Court Lane. In the vicinity of the site, the lane is single vehicle width with a grass verge on both sides although no separate footpath. It then widens out nearer its junction with Forge Lane where there is also a length of footpath on one side.
9. The appellant submitted a Highways Report¹ as part of their appeal documentation. During the survey period undertaken to inform the Highways Report, existing traffic movements along Tennis Court Lane were low, pedestrian use equated to around one person every 10 minutes and there was a very low level of use by cyclists and a negligible use by those on horses. This is a similar level and nature of use to what I observed during my site visit on a weekday afternoon, which I appreciate was only a snapshot in time. I also observed that there was some very limited on-street parking near to the junction of Tennis Court Lane with Alne Road and along Forge Lane.
10. The Highways Report estimates that there would be a net increase of one vehicle movement per hour arising from the proposed development, when the removal of farm traffic associated with the current use of the site is taken into account. This would equate to around one vehicle movement every 20 minutes compared to the current traffic level of around one movement every 30 minutes. The Highways Report states that it would take a pedestrian around 60 seconds to walk the narrow stretch of Tennis Court Lane from the site, which tallies with my observations.
11. Given the very small increase in predicted traffic levels and frequency of movement, the likelihood of a pedestrian encountering a vehicle on the narrow stretch of the lane would be very low. Vehicle speeds would reasonably be

¹ Proof of Evidence – Highways, Via Solutions, December 2021

expected to be low due to the nature of the lane; the appellant has demonstrated that the required visibility splays at the site entrance would be achievable and there is reasonable visibility along this stretch of the lane for both pedestrians and vehicle drivers. There is no substantive evidence before me to demonstrate that existing on-street parking in the vicinity of the site causes significant harm to the safety of pedestrians or other road users. In addition, a new passing place is proposed on the frontage of the site which would be an improvement over the existing situation.

12. On this basis, I conclude that the proposed development would not be harmful to highway safety with particular regard to pedestrians. It would therefore accord with Policies IC1 and IC2 of the Local Plan, which requires that proposals do not have an unacceptably harmful impact on existing infrastructure, that highway safety would not be compromised, and safe physical access can be provided to the proposed development from the footpath and highway networks.

Living Conditions

13. The site is located close to agricultural buildings. Given the proximity, there is the potential for harmful noise and disturbance for future occupiers of the proposed development arising from the use of the buildings to house livestock or equipment. The completed UU submitted by the appellant requires that the use of the defined land and buildings are not used for the housing of livestock or the operation of agricultural equipment which could result in noise or other disturbance to the detriment of occupiers in neighbouring sites.
14. The Council has confirmed that it is satisfied that the UU deals with the matters raised within its second reason for refusal. Based on the evidence before me and my own observations, I have no reason to take a different view. I therefore conclude that, subject to the UU, the proposed development would not give rise to unacceptable living conditions for future occupiers with regard to noise and disturbance. The proposed development would therefore accord with the residential amenity requirements of Policy E2 of the Local Plan.

Biodiversity

15. The appellant submitted a Biodiversity Net Gain Assessment (BNG Assessment) as part of the appeal. This demonstrates that the proposed development would provide improvements for biodiversity through the creation of vegetated gardens, ground level planters, additional trees and a length of native hedgerow. When factoring in the nature and extent of the anticipated habitat gains and losses, I am satisfied that a measurable net gain in biodiversity would be achievable. The measures identified in the BNG Assessment as contributing to a biodiversity net gain could be secured by a condition.
16. I therefore conclude that it has been satisfactorily demonstrated that the proposed development would have an acceptable effect on biodiversity having particular regard to biodiversity net gain, subject to a condition to secure the required features. Accordingly, the proposed development would accord with the requirement of Policy E3 of the Local Plan in this regard, which has been summarised above.

Other Matters

17. The site lies adjacent to the boundary of the Tollerton Conservation Area (the Conservation Area). From the submitted information and my observations, the significance of the Conservation Area in part, derives from the relationship of the village with the surrounding countryside, reflecting the area's farming legacy. There would be a change from an agricultural to a residential use. However, the layout of the proposed development would retain glimpsed views of the countryside through the site; the proposed hedgerow would enhance the rural character of the lane; and the design of plot 4, the most visible from the Conservation Area, would reflect the site's agricultural context. There would only be limited visibility of the site when looking towards the Conservation Area and this would be in the context of existing built development. Accordingly, the character and appearance of the Conservation Area would be preserved and its significance as a designated heritage asset would not be harmed.
18. I note that the Council can demonstrate a sufficient housing land supply. However, housing land supply figures are not maximums, significantly boosting the supply of housing is an objective of the government, and the submitted evidence indicates that there is a need for smaller houses within the District which the proposed development would provide. The proposal would be reflective of the character of the northern part of Tennis Court Lane and would be commensurate with the size and function of Tollerton as a Secondary Village, as defined in Policy S3 of the Local Plan.

Conditions

19. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).
20. As well as the standard time condition, and for certainty, one is required to ensure that the development is carried out in accordance with the approved plans.
21. A number of conditions are required prior to commencement of development to ensure that the relevant details are acceptable at an appropriate stage, the details could otherwise be compromised and in order to minimise the risk of abortive work being undertaken. To ensure that the proposal is appropriate to its landscape context, a condition is necessary to require details of the existing and proposed ground and floor levels of the site and the existing ground and floor levels of neighbouring buildings. To ensure that the development has a satisfactory means of drainage and to avoid pollution of the water environment, a condition is necessary to require a scheme for the discharge of sewerage and surface water. Details of the construction phase is necessary to ensure that the impacts of construction on public safety and living conditions of neighbouring occupiers are minimised.
22. In the interests of the character and appearance of the area, it is necessary to require samples of the external materials to be used on the development, details of the means of enclosure and landscaping details including biodiversity net gain measures and replacement planting where necessary.
23. A scheme to address land contamination risks is necessary in the interest of public health and safety and the environment.

24. In the interests of highway safety, conditions are necessary to prevent surface water discharging onto the highway, and to require the provision and retention of the required visibility splays, the parking, manoeuvring and turning areas shown on the approved plans, and that access to the site is constructed in accordance with the relevant specification. To ensure that the design of the passing place is appropriate in the interests of the safety and convenience of highway users, it is necessary to require details of its design and a programme for its implementation.
25. In the interests of biodiversity, details of bat mitigation measures and nesting opportunities to support house sparrows are necessary. For the same reason a requirement for the removal of Himalayan balsam is necessary. It is necessary to restrict when certain works take place in the interests of protecting nesting birds.
26. It is necessary to remove rights for works permitted to take place without the need for express planning permission on a selective basis, referring to classes of the GPDO² concerned with enlargement, improvement or other alteration and outbuildings, in the interest of the character and appearance of the area and living conditions of nearby residents.
27. The Council has recommended a condition requiring that a licence is sought from Natural England. Decisions about whether a licence is granted are the responsibility of Natural England and are separate from the decision on whether or not to grant planning permission. Such a condition is not necessary as it relates to compliance with other regulatory requirements.

Conclusion

28. For the reasons given above, the proposed development would accord with the development plan taken as a whole and there are no material considerations that indicate that it should be determined other than in accordance with it. For the reasons given above, I therefore conclude that the appeal should be allowed.

F Wilkinson

INSPECTOR

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan 20092- VB- XX- XX- DR- A- (03)001 P00; proposed site plan 20092- VB- XX- XX- DR- A- (03)105 P03; Section 20092- VB- XX- XX- DR- A- (03)150 P01; Plot 1 ground floor 20092- VB- B1- 00- DR- A- (03)110 P01; Plot 1 first floor 20092- VB- B1- 01- DR- A- (03)111 P01; Plot 1 roof plan 20092- VB- B1- 02- DR- A- (03)120 P01; Plot 1 elevations 20092- VB- B1- XX- DR- A- (03)130 P01; Plot 1 elevations 20092- VB- B1- XX- DR- A- (03)131 P01; Plot 1 garage 20092- VB- B1- XX- DR- A- (03)132 P00; Plot 2 ground floor 20092- VB- B2- 00- DR- A- (03)110 P01; Plot 2 first floor 20092- VB- B2- 01- DR- A- (03)111 P01; Plot 2 roof plan 20092- VB- B2- 02- DR- A- (03)120 P01; Plot 2 elevation 20092- VB- B2- XX- DR- A- (03)130 P01; Plot 2 elevation 20092- VB- B2- XX- DR- A- (03)131 P01; Plot 3 ground floor - 20092- VB- B3- 00- DR- A- (03)110 P01; Plot 3 roof plan - 20092- VB- B3- 01- DR- A- (03)120 P01; Plot 3 elevation 20092- VB- B3- XX- DR- A- (03)130 P01; Plot 3 elevation 20092- VB- B3- XX- DR- A- (03)131 P01; Plot 4 ground floor plan 20092- VB- B4- 00- DR- A- (03)110 P01; Plot 4 first floor 20092- VB- B4- 01- DR- A- (03)111 P01; Plot 4 roof plan 20092- VB- B4- 02- DR- A- (03)120 P01; Plot 4 elevation 20092- VB- B4- XX- DR- A- (03)130 P02; Plot 4 elevation 20092- VB- B4- XX- DR- A- (03)131 P02.
- 3) Prior to the commencement of development details of the existing ground and floor levels of site and neighbouring buildings and the proposed ground and finished floor levels of the site shall be submitted to and approved in writing by the Local Planning Authority. The levels shall relate to an identified fixed Ordnance Datum. The development shall be constructed in accordance with the approved details and thereafter be retained in the approved form.
- 4) Prior to the commencement of development details of the foul sewage and surface water disposal facilities shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall thereafter be implemented and completed in accordance with the approved details prior to any dwelling being first occupied and shall be retained thereafter.
- 5) Prior to the commencement of development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. Construction of the development shall be undertaken in accordance with the approved plan. The Plan shall provide for:
 - details of any temporary construction access to the site including measures for removal following completion of construction works;
 - wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
 - the parking of contractors' vehicles;
 - areas for storage of plant and materials used in constructing the development clear of the highway;
 - contact details for the responsible person (site manager/office) who can be contacted in the event of any issue related to the construction phase.

- 6) Prior to the demolition of any buildings, details and timings of the bat mitigation and compensation measures as set in out section 4 of the Bat and Barn Owl Survey report (prepared by Quants Environmental, dated June 2021) shall be submitted to and approved in writing by the Local Planning Authority. The demolition of the buildings shall take place in accordance with the approved details and timings. The approved details shall be retained thereafter.
- 7) Above ground construction shall not be commenced until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details and retained thereafter.
- 8) Above ground construction shall not be commenced until details relating to boundary walls, fences and other means of enclosure for all parts of the development have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details.
- 9) Above ground construction shall not be commenced until a detailed landscaping scheme indicating the type, height, species and location of all new trees and shrubs, and the habitat creation measures identified in section 4 and figure 3 of the Biodiversity Net Gain Assessment (prepared by Quants Environmental, dated May 2022, reference 1462) has been submitted to and approved in writing by the Local Planning Authority. The landscaping works shall be carried out in accordance with the approved scheme before any part of the development hereby permitted is first occupied. Any trees or plants which within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.
- 10) Above ground construction shall not be commenced until details of measures required to prevent surface water from the site discharging on to the highway together with a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details and programme.
- 11) Except for investigative works, no excavation or other groundworks or the depositing of material on site in connection with the construction of the passing place shown on approved plan 20092- VB- XX- XX- DR- A- (03)105 P03, or any structure or apparatus which will lie beneath the passing place, shall take place until full detailed engineering drawings of all aspects including any structures which affect or form part of the passing place, and a programme for implementation, have been submitted to and approved in writing by the Local Planning Authority. The passing place shall be completed in accordance with the approved details before any part of the development hereby permitted is first occupied.
- 12) If any contamination be suspected or encountered during development all works shall cease and the Local Planning Authority shall be notified in writing. No further works (other than approved contaminated land remediation measures) shall be undertaken or the development occupied until a Remediation Strategy Report has been submitted to and approved in writing by the Local Planning Authority and the approved remediation measures have been

implemented in accordance with the timescales in the approved Strategy. No further works shall be undertaken, or the development occupied until a Validation Report has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy and Validation Report shall be prepared in accordance with the Environment Agency's Land Contamination Risk Management and the Council's guidance note "Contaminated Land - A Guide to Developers" (or equivalent British Standard and Model Procedures if replaced).

- 13) The development shall not be brought into use until the access to the site has been set out and constructed in accordance with the following requirements:
 - The crossing of the highway verge must be constructed in accordance with the approved plan 20092- VB- XX- XX- DR- A- (03)105 P03 and Standard Detail number E50.
 - Any gates or barriers must be erected a minimum distance of 5 metres back from the carriageway of the existing highway and must not be able to swing over the existing highway.
 - The final surfacing of any private access must not contain any loose material that is capable of being drawn on to the existing or proposed public highway.
- 14) There shall be no access or egress by any vehicles between the highway and the application site until splays are provided giving clear visibility of 25 metres measured along both channel lines of the major road from a point measured 2.0 metres down the centre line of the access road. In measuring the splays, the eye height must be 1.05 metres and the object height must be 0.6 metres. Once created, these visibility splays must be maintained clear of any obstruction and retained for their intended purpose at all times.
- 15) No part of the development shall be brought into use until the access, parking, manoeuvring and turning areas for all users have been constructed in accordance with the approved plans. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.
- 16) The development shall not be carried out other than in full accordance with the house sparrow nesting opportunities measures set out in section 4 of the Bat and Barn Owl Survey report (prepared by Quants Environmental, dated June 2021).
- 17) No removal of or any works to hedgerows, trees and shrubs or works to or demolition of buildings or structures shall take place between the 1st March and 31st August inclusive unless a competent ecologist has inspected the area no more than 24 hours prior to its removal and has provided written confirmation to the Local Planning Authority that no nests or breeding birds will be harmed by the development and/or that there are appropriate measures in place to protect nesting bird interest on the site.
- 18) Himalayan balsam shall be removed from the site in accordance with the details set out in section 4 of the Bat and Barn Owl Survey report (prepared by Quants Environmental, dated June 2021) prior to the commencement of above ground construction.

19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration shall be carried out to the dwellings nor shall any structure be erected within or on the boundary of the curtilage of the dwellings hereby permitted.