

## Appeal Decision

Site visit made on 14 March 2017

by **Andrew McCormack BSc (Hons) MRTPI**

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

Decision date: 7 April 2017

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**Appeal Ref: APP/F4410/W/16/3166003**

**Adjacent to 'Acre Paddock', Brockholes Lane, Branton, Doncaster DN3 3NH**

- 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 Mrs J M Gibbins against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 16/01974/OUT, dated 1 August 2016, was refused by notice dated 20 October 2016.
  - The development proposed is erection of one dwelling including means of access and landscaping.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of one dwelling including means of access and landscaping in accordance with the terms of application Ref: 16/01974/OUT, dated 1 August 2016, and subject to the conditions set out in the schedule attached to this decision letter.

### Procedural Matter

2. Outline planning permission was sought for the proposed development in the original application which included details of the means of access and landscaping. Accordingly, I have assessed the appeal proposal on that basis.

### Main Issue

3. The main issue is whether the proposed development would be inappropriate development in the countryside, having regard to its location beyond the defined settlement boundary and its effect upon the character and appearance of the area.

### Reasons

4. The appeal site is an area of land located at the end of a continuous linear pattern of development along Brockholes Lane. It is bounded by hedges and trees which have some gaps apparent along all boundaries. To the south lies the Yorkshire Wildlife Park and to the north and east are residential properties including the recent Badger's Holt housing development on the opposite side of Brockholes Lane. The property adjacent to the appeal site, known as 'Acre Paddock' is a single storey property on a spacious plot which is characteristic of the properties along the south eastern side of Brockholes Lane. The wider locality is characterised as an edge of settlement, semi-rural area with
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- relatively large, mostly single storey properties on generously sized plots which are accessed from Brockholes Lane.
5. Policy CS2 of the Doncaster Core Strategy (CS) sets out the development strategy for the area which focuses development on the principal towns. Whilst some development is acceptable in larger villages such as Branton, the Council seeks to conserve and enhance defined villages and only quality infill housing will be permitted. Policy CS3 states how the countryside will be protected and enhanced through a Countryside Protection Policy Area (CPPA) and sets out the principles against which development is to be assessed to achieve this. These include development not being visually detrimental in terms of siting, design and materials and not creating highway issues or adversely affecting the living conditions of neighbouring and future occupiers. Furthermore, the policy states that development should preserve the openness of the CPPA and not conflict with the purposes of included land within it.
  6. Policies ENV2 and ENV4 of the Doncaster Unitary Development Plan (UDP) set out the countryside policy area designations and are the general development control policies relating to the countryside. Policy ENV4 sets out the key criteria for development in the countryside to be considered acceptable in principle.
  7. The appeal site lies outside of the defined settlement boundary and the proposal is therefore development in the countryside. Furthermore, the proposal is not infill development and I note that this is accepted by the appellant. Although outside the settlement boundary, in this particular case, the proposal would be adjacent to residential development, on a self-contained plot which has well-defined boundaries. From the evidence before me, I find that it would be in keeping with the character and appearance of the area in terms of the pattern of development and with regard to nearby properties in terms of the scale and position of the dwelling on the plot and its plot ratio.
  8. Due to the well-defined boundaries of the site and its relationship to the surrounding development, in my view, the site appears to be more a part of the settlement rather than an area of open countryside. Moreover, I note that the extent of the recent development at Badger's Holt to the northwest of Brockholes Lane has altered the character and appearance of the area, diminishes the impact of the proposal on the openness of the countryside and limits the harm in that regard. As a result, I find that the proposal would have no material adverse effect on the openness of the CPPA and would therefore preserve it.
  9. From what I have seen and read, I find that the proposal would have no significant impact on the openness of the CPPA. It would form a logical and reasonable development which would be in keeping with the character and appearance of its context. It would not erode the countryside or its openness and would provide a dwelling in a reasonably accessible and sustainable location close to local services and facilities in Branton. I acknowledge that the Council believes that allowing this appeal would encourage further development for housing in similar edge of settlement locations. However, each proposal, including the appeal scheme, must be considered on its own merits.
  10. I have been referred to several recent appeal decisions and planning applications by both parties in support of their respective cases. I have had due regard to these in determining this appeal. However, whilst I note that

there are some relevant elements and similarities to the appeal case provided within these cases, there are also many differences. Furthermore, I do not have the full details of these other cases before me. Notwithstanding this, I have considered the proposal before me on its own merits and within its own circumstances. Accordingly, whilst having had due consideration to these other cases, I have given only limited weight to them in determining this appeal.

11. The proposed development would be contrary to the approach to the location and supply of housing and the protection of the countryside set out in Policy CS2 of the CS and Policy ENV2 of the UDP. Therefore, it would not be in accordance with the development plan. In such circumstances, the National Planning Policy Framework (the Framework) indicates that planning permission should not be granted unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making. In this case, the proposal would be contrary to the development plan policies to which I have referred. However, I find that the other material considerations set out above would outweigh any resultant harm identified and provide a reasonable justification for the proposed development to be allowed.
12. Consequently, I conclude that the proposal would not be inappropriate development in the open countryside. Moreover, it has no significant detrimental effect on the openness of the CPPA or on the character or appearance of the local area and as a result, it would preserve its openness. Therefore, it would comply with Policy ENV4 of the UDP and Policy CS3 of the CS. Amongst other matters, these policies seek to strictly control development in the countryside and to ensure that development protects, preserves and enhances the openness of the CPPA.

### **Other Matters**

13. I note concerns regarding the potential for overlooking and overshadowing of private gardens to the rear of properties on the Badger's Holt development to the north of the appeal site. Whilst I appreciate the importance of these concerns to those involved, the indicated position of the proposed dwelling on the submitted plans shows that it would be set back from Brockholes Lane to a similar distance to that of 'Acre Paddock' adjacent. As such, the proposal would be sufficiently distant from the properties and their gardens on the opposite side of Brockholes Lane to exceed the identified distance standards so as to not result in any significant adverse effect regarding overlooking or loss of privacy. Similarly, the distance of the proposed dwelling from the properties to the northwest of Brockholes Lane would not result in any substantive overshadowing. I note that the Council has reached a similar view on these matters and I see no reason to differ from that.
14. I have considered concerns regarding an increase in the potential for conflict between non-motorised users and motorised vehicles using Brockholes Lane. In my view, the one or two additional vehicles resulting from the proposal would have no substantive adverse impact on other road users in terms of safety or potential conflict. Furthermore, this is the view of the local highway authority and therefore, I am satisfied that there would be no material impacts in relation to these matters.

### **Conditions**

15. I have had regard to the planning conditions that have been suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered the suggested conditions to better reflect the relevant parts of the Planning Practice Guidance (PPG).
16. In addition to the standard implementation conditions (1, 2, 3 and 4), I have imposed conditions specifying the approved plans (5) in order to provide certainty and clarification regarding access and landscaping and in the interests of character and appearance. Conditions relating to the investigation, assessment and, if appropriate, remediation and verification regarding land contamination matters (6, 7 and 8) foul and surface water drainage (9) are necessary and reasonable in the interests of the living conditions for future occupiers. Furthermore, a condition relating to the provision of an ecological enhancement plan (10) is necessary and reasonable to ensure that the ecological interests of the site are maintained.
17. In addition, a condition ensuring the details of boundary treatments for the site (11) is required for reasons of character and appearance and conditions regarding the provision and quality of the areas of the site to be used by vehicles (12) and access to the site (13) are necessary and reasonable in the interests of public and highway safety. Finally, a condition relating to the implementation of a landscaping scheme (14) is reasonable and required in the interests of character and appearance.

### **Conclusion**

18. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*Andrew McCormack*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The details of the appearance, 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.
  - 3) 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.
  - 4) Development relating to the reserved matters shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
  - 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No: 2003/TP/001 – '*Location Plan - Proposed*', dated July 2016; Drawing No: 2003/TP/002 – '*Site Plan - Proposed*', dated July 2016; and the '*Landscaping Plan*' submitted with the planning application Ref: 16/01974/OUT and reproduced at Appendix 4 of the Council's Committee Report.
  - 6) No development hereby permitted shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, 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), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
    - i) a survey of the extent, scale and nature of contamination;
    - ii) the potential risks to:
      - human health;
      - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
      - adjoining land;
      - ground waters and surface waters;
      - ecological systems; and
      - archaeological sites and ancient monuments.
- a) The Phase 1 desktop study shall propose further Phase 2 site investigation and risk assessment works, if appropriate and necessary, based on the relevant information discovered during the initial Phase 1 assessment.
  - b) The Phase 2 site investigation and risk assessment must be approved by the local planning authority prior to any investigations commencing on site. The Phase 2 investigation shall include relevant soil, soil gas, surface and ground water sampling and shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a quality assured sampling and analysis methodology and current best practice. All the investigative works and sampling on site, together with the results of analysis, and risk assessment to any receptors, shall be submitted to the local planning authority for approval.

- c) If, as a consequence of the Phase 2 site investigation, a Phase 3 remediation report is required, then this shall be approved by the local planning authority prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters, the site must not qualify as contaminated land under Part 2A of the Environment Protection Act 1990 in relation to the intended use of the land after remediation.
- d) The approved Phase 3 remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. If during the works contamination is encountered which has not previously been identified, then all associated works shall cease until the additional contamination is fully assessed and an appropriate remediation scheme approved by the local planning authority.
- e) Upon completion of the Phase 3 work, a Phase 4 verification report shall be submitted to and approved by the local planning authority. The verification report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has met the required clean-up criteria shall be included in the verification report together with the necessary documentation detailing what waste materials have been removed from the site. The site shall not be brought into use until such time as all verification data has been approved by the local planning authority.
- 7) Should any unexpected significant contamination be encountered during development, all associated works shall cease and the local planning authority shall be notified in writing immediately. A Phase 3 remediation and Phase 4 verification report shall be submitted to the local planning authority for approval. The associated works shall not re-commence until the reports have been approved by the local planning authority.
- 8) Any soil or soil forming materials brought to site for use in garden areas, soft landscaping, filling and level raising shall be tested for contamination and suitability for use on site. Proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) and source material information shall be submitted to, and approved in writing by, the local planning authority prior to any soil or soil forming materials being brought onto site. The approved contamination testing shall then be carried out and verification evidence submitted to, and approved in writing by, the local planning authority prior to any soil and soil forming material being brought onto site.
- 9) The development hereby permitted shall not be begun until details of the foul, surface water and land drainage systems and all related works necessary to drain the site have been submitted to, and approved in writing by, the local planning authority. These works shall be carried out concurrently with the development and the drainage system shall be operating to the satisfaction of the local planning authority prior to the occupation of the development.

- 10) On submission of the first reserved matters application, an ecological enhancement plan shall be submitted to, and approved in writing by, the local planning authority. This plan shall include details of the following measures, all of which shall be implemented prior to occupation of the site, or an alternative timescale to be approved in writing by the local planning authority:
  - i) The boundary hedge should be retained and enhanced through regular management by cutting and gapping up using native species appropriate for the site;
  - ii) Mature trees on the site should be retained and managed so as to enhance their value and wildlife;
  - iii) Further native broadleaf trees should be planted in appropriate areas of the site;
  - iv) The areas of grassland identified as species rich should be retained and a cutting/grazing regime established;
  - v) Areas of species rich grassland can be created through specific treatment of existing species poor grassland and sowing of new grasslands;
  - vi) The siting of three bot boxes and three bird boxes in mature trees within the site.
- 11) The development shall not be occupied until a plan has been submitted to, and approved in writing by, the local planning authority indicating the positions, design, materials, height and type of boundary treatment to be erected on site, including any gates. Unless otherwise approved in writing by the local planning authority, the details as approved shall be completed prior to the occupation of any building on site.
- 12) Before the development is brought into use, that part of the site to be used by vehicles shall be surfaced, drained and where necessary marked out in a manner to be approved in writing by the local planning authority.
- 13) The development hereby permitted shall not be brought into use until a crossing over the footpath/verge has been constructed in accordance with a scheme previously approved in writing by the local planning authority.
- 14) The scheme of landscaping which has been approved as part of this proposal shall be begun during the first available planting season following the commencement of the development hereby granted. It shall thereafter be maintained by the site owner for a period of five years. Any tree or shrub planted in accordance with the scheme which becomes damaged or diseased, or dies or is removed within the five years shall be replaced during the next planting season. Any staking, tying, weeding, watering and other action deemed necessary by the local planning authority shall be carried out by the owner in accordance with the authority's publication 'Landscape Specification in Relation to Development Sites'.

**END OF SCHEDULE**