The Planning Inspectorate

Appeal Decision

Site visit made on 10 July 2024

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Appeal Ref: APP/Y3940/W/24/3342139

Land adjacent to A350, West Ashton Rd, Yarnbrook, Trowbridge, BA14 6AF

- 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 Homes Nuvo Limited against the decision of Wiltshire Council.
- The application Reference is PL/2023/10654.
- The development proposed is outline consent for 4No. dwellings with all matters reserved apart from access.

Decision

1. The appeal is dismissed.

Costs

2. Applications for costs has been made by the Appellant against the Council and vice versa. These applications are the subject of separate decisions.

Procedural Matter

3. The appeal relates to an outline application. All matters other than access are reserved. I shall consider the submitted plans accordingly.

Main Issues

4. The main issues are a) whether the proposal would be acceptable in principle in this location and b) the effect of the scheme on highway safety and convenience.

Reasons

Principle of location

5. The appeal site comprises a well-defined field of former agricultural land extending to around 0.18 hectares. It fronts the north west side of the A350 and has a scatter of dwellings within proximity. I note that the address of the site is Yarnbrook, the closest village centre, albeit this area of land and the nearby homes lie within West Ashton Parish. The proposal is as described above.

6. The Wiltshire Core Strategy (CS) includes Core Policy CP2 – The Delivery Strategy - which is pertinent to this appeal scheme and seeks to provide for the most sustainable pattern of development within Wiltshire. An extract from the policy states:

At the Small Villages development will be limited to infill within the existing built area. Proposals for development at the Small Villages will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provided that the development:

i) Respects the existing character and form of the settlement

ii) Does not elongate the village or impose development in sensitive landscape areas

iii) Does not consolidate an existing sporadic loose knit areas of development related to the settlement.

7. Text at CS paragraph 4.34 explains:

For the purposes of Core Policy 2, infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling. Exceptions to this approach will only be considered through the neighbourhood plan process or DPDs

8. For my part I would not class the site as being within the built-up area of Yarnbrook (or West Ashton village). I appreciate that the Council has concluded that the homes close-by to the site would be classed as within Yarnbrook (particularly when dealing with application reference 19/03240/OUT) but I see no reason why it would necessarily follow that this field would also be classed as within a built-up entity. It would seem to me that the built-up form would logically be defined as 'skewing' away from the A350 at this locality; in other words, Yarnbrook heads off northwards 'behind' the appeal site. On this basis the site would not class as even being suitably tested for infill status.

9. One can debate a suitable size for infill and I do note cases put forward by the Appellant. However, and contrary to the above paragraph, even if one deemed the site as being *within* Yarnbrook rather than a detached field alongside the A350 to my mind the former agricultural land would not represent a *small gap* within the village. It is simply neither small nor a gap.

10. Lastly, even if one did define it as infill, I would assess that it failed CS CP2 criteria i) and iii) because it would by reason of character and form not respect the generally liner village and would be appreciable consolidation at the loose-knit end of the settlement.

11. Given the above I must conclude that the appeal proposal would conflict with CS Policy CP2.

12. Furthermore, this rural development proposal, without any over-riding justification or merit, would also run contrary to CS Policies CP57, 60 and 61 which taken together, and amongst other matters, in their own way seek to secure sustainable development.

13. Finally, on the question of principle, one would consider CS CP62. This underlines that new development should not be accessed directly from the National Primary Route Network (NPRN) outside built-up areas, unless an over-riding need can be demonstrated. I note the Appellant's argument that an old (now overgrown) field entrance exists but this would be very different from a

significant access to 4 new dwellings being created at a point further along the frontage. I conclude that the scheme would fail to accord with CS CP62.

Highway safety and convenience

14. I touch on CS CP62 above. The reasoning for the strict control over new development to the NPRN is to assist with traffic flow and reduce risk. Having observed the vehicular flows, speeds and make-up on this section of the A350, along with its alignment, lack of adequate footways, lighting or crossings, and having also personally gained access to the road from three existing nearby points, I would deem that new development served as planned would undoubtably hinder traffic flow and significantly increase risk. Whatever the details of the entrance design, I would say that this is not a suitable location for new housing to emerge onto the NPRN. The scheme would also fail to suitably provide for any meaningful pedestrian or cycle arrangements.

15. In all the circumstances I conclude that the proposal would thus conflict with CS CP62 and those policies which I cite in paragraph 12 above.

Other matters

16. I recognise that the scheme would assist the supply of housing land. However, the contribution from the proposal would be modest and I am of the view that this appeal scheme by reason of its location and nature would not reasonably be termed sustainable development.

17. The Council and third parties raised concerns over the service of 'notice' for land not under the Appellant's control. The Council also raised issues over habitat protection, possible archaeological harm, and immediate and wider flood risk. However, given my findings on the two main issues including principle I need not explore these matters further; outcomes in any direction would not be sufficient to give rise to a change in my position that this scheme should not be allowed to progress.

18. I have carefully considered all the points raised by the Appellant but these matters do not outweigh the concerns which I have in relation to the main issues identified above.

19. I confirm that policies in the National Planning Policy Framework have been considered; the Council's policies which I cite mirror relevant objectives within that document.

Overall conclusion

20. For the reasons given above I conclude that the proposed development would not be acceptable in principle in this location and that the scheme would have unacceptable effects on highway safety and convenience. Accordingly, the appeal is dismissed.

D Cramond

INSPECTOR

The Planning Inspectorate

Costs Decision

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

A. Costs application in relation to Appeal Ref: APP/Y3940/W/24/3342139 Land adjacent to A350, West Ashton Rd, Yarnbrook, Trowbridge, BA14 6AF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Homes Nuvo Limited for an award of costs against the decision of Wiltshire Council.
- The appeal was made against the refusal of an application, Ref PL/2023/10654, which sought outline planning permission for 4No. dwellings with all matters reserved apart from access.

B. Costs application in relation to Appeal Ref: APP/Y3940/W/24/3342139 Land adjacent to A350, West Ashton Rd, Yarnbrook, Trowbridge, BA14 6AF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wiltshire Council for an award of costs against the decision of Homes Nuvo Limited to appeal.
- The appeal was made against the refusal of an application, Ref PL/2023/10654, which sought outline planning permission for 4No. dwellings with all matters reserved apart from access.

Decisions

1. Application A for award of costs is refused.

2. Application B for award of costs is refused.

Procedural Matter

3. I use two headings above as in this instance the two principal parties, the Appellant and the Council, have made a cost application against each other.

Reasons

4. Planning Practice Guidance (guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be either procedural or substantive.

5. The Appellant considers that there has been unreasonable behaviour by the Council. The Appellant argues that the Council acted unreasonably by not following guidelines on accepting additional information. This information could have resulted in positive changes, reducing the reasons for refusal. The Appellant feels prejudiced in that additional information cannot be submitted at appeal stage. The Appellant feels that potentially unnecessary costs have been

incurred. For example, Biodiversity Net Gain work has and will lead to costs and the Appellant generally considers there has been significant financial disadvantage due to the Council's unfair and unreasonable behaviour during the lifetime of the application.

6. The Council rebuts the Appellant's case and makes a counter claim for costs. It indicates that at an early stage in the planning process the applicant was advised that there were procedural concerns with the application pertaining to the extent of the red line and land ownership and the associated required certificates and formal notices. The Appellant did revise matters and a second round of full consultation was issued; this led to further concerns by neighbours over red-line accuracy. The Council suggested further revision or withdrawal. The Appellant did not agree the landownership claims and that continues. Furthermore, the Council claims it advised the Appellant in good time that the scheme was unacceptable in principle and in any event would need ecological, flood risk and archaeological work. The Council advised that refusal would be forthcoming and withdrawal was offered or additional details could be submitted at own risk given the perceived procedural irregularity and that the principle of development was considered unacceptable.

7. The Council says that the Appellant declined to withdraw the application or submit further details, wished the Council to progress, and indicated more information would be provided at appeal stage albeit at the last minute a request for an extension of time was made to allow more information to be forthcoming. The Council felt it should progress with determination and argues it was the Appellant's actions which caused the appeal. Indeed, an appeal was clearly the predicated aim of the Appellant. Such an appeal in the Council's eyes was time and resource wasting for all as, not least with an incomplete application bundle, there would appear to be no way a favourable appeal outcome could be forthcoming. This is compounded by what is seen as a base-less claim for costs against the Council

8. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, a partial, award of costs for either party.

9. From the Appellant's perspective, I recognise that an appeal process can be time and fee consuming and that professional assistance comes at a cost. It is clearly regrettable when an applicant feels that the processing of a planning application could have been dealt with better. However, I am not persuaded that actions of the Council during that period directly lead to the appeal. It would seem to me that the Council took a reasonable, and communicative, approach to the handling of the planning application and the decision was in a fair timescale and had an appropriate degree of logic and professionalism. The Appellant could have provided more information within the application bundle or as follow-up but did not and post decision then reasonably exercised the fair rights to appeal and to make an application for costs.

10. Looking at the Council's perspective I can see that it would not choose to spend time and effort handling an appeal that it felt had no chance of success. However, I would say that the appeal was understandable and not frivolous and it was not inconceivable that an Inspector could reach a different decision from the Council. The Appellant put forward a comprehensive and reasonably

argued case with suitable material that was well worth careful review by the Inspectorate. The Appellant was entitled to appeal and the normal consequent procedure is for the Council to present its case, as it did. Similarly, the Appellant chose to make a claim for costs and I would not read that as a completely irrational stance. Again, the Council, reasonably, chose to respond to that case and in this instance went further by deciding to make a counter-application for costs.

11. From the above two paragraphs I trust it can be gauged that it would not be appropriate to award full or partial costs to either principal party. I would conclude that there was no unreasonable behaviour by either the Council or the Appellant. In my opinion, neither side took a stance which was unsubstantiated and neither party took actions during the planning assessment process or via the subsequent appeal which would be deemed as being irrational.

12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated in the cases of the applications for costs A or B.

D Cramond

INSPECTOR