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## Appeal Decision

Site visit made on 12 January 2016

**by Graeme Robbie BA(Hons) BPI MRTPI**

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

**Decision date: 01 April 2016**

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**Appeal Ref: APP/Y2736/W/15/3133933**

**Martlet House, Back Lane, Ampleforth, North Yorkshire YO62 4DE**

- 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 Mr and Mrs M Hewitt against the decision of Ryedale District Council.
  - The application Ref 14/01410/FUL, dated 22 December 2014, was refused by notice dated 10 March 2015.
  - The development proposed is erection of a five bedroom dwelling and formation of vehicular access.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a five bedroom dwelling and formation of vehicular access at Martlet House, Back Lane, Ampleforth, North Yorkshire YO62 4DE in accordance with the terms of the application, Ref 14/01410/FUL, dated 22 December 2014, subject to the conditions set out in the schedule to this decision.

### Procedural Matters

2. The description of the development provided on the application form was updated by a more complete description in subsequent documents. I consider the revised description to be usefully more accurate and have employed it here.

### Main Issues

3. Both parties have drawn my attention to an extant planning permission for the erection of a four bedroom dwelling with detached double garage on the current appeal site. I have been furnished with copies of the approved drawings, the Council's officer delegated report and the decision notice in that respect and I have considered the proposal before me in that context.
  4. It is accepted by both parties that the principle of residential development in this location is acceptable. I am satisfied that the extant proposal, whilst differing from the current proposal, is of broadly the same character and nature and would provide a similar range of accommodation and facilities. I have also noted that the extant proposal was granted planning permission without making provision for contributions towards affordable housing provision or towards open space, recreation or leisure facilities. I have not been presented with any evidence to indicate that, in the event that the appeal proposal should
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fail, the extant permission would not or could not be built. I have therefore accorded those circumstances appropriate weight in the consideration of the proposal before me.

5. Having regard to the above, and the evidence before me, I conclude that the main issues are:-
- Whether the proposal would preserve or enhance the character and appearance of the Ampleforth Conservation Area; and
  - Would the proposal make adequate financial contributions towards affordable housing and open space, recreation and leisure facilities.

### **Reasons**

#### *Whether the proposal would preserve or enhance the character and appearance of the Ampleforth Conservation Area*

6. The core of the village and its conservation area is largely linear, running east-west along the Oswaldwick to Wass road. Towards the eastern end of the village the main road and St Hilda's Walk / Back Lane run parallel to each other. In general terms the pattern of development on each maintains this linear form, with houses either fronting the main road (also referred to as East End at this point) or set back from and above (Back Lane) the two roads. With long, sloping rear garden plots, there is a general sense of separation and space between the built form of those houses along the main road and that of the lower Back Lane.
7. The appeal site lies within the central area of this part of the village, between the rear garden areas of Martlet House (Back Lane) and College Garth (East End). Together with the rear garden areas of the Victoria House and Stables and Eldgate, and adjoining separate field enclosures, the appeal site contributes to the sense of separation identified above.
8. However, this distinction becomes blurred either side of the appeal site, where modest houses in smaller garden plots become more prevalent, and along the Orchard where houses have been developed in the intervening spaces between the East End and Back Lane. Similarly, to the west of the appeal site, existing development around the public house in the centre of the village spills down Station Road and Old Station Road towards its junction with St Hilda's Walk / Back Lane. New development at the rear of the surgery on Back Lane will, upon completion, form an additional visual and physical link between Back Lane and the main road.
9. In between these, the appeal site and its immediate surroundings form a green, undeveloped pocket of land. However, both parties have explored in detail the presence of an existing extant planning permission. That permission is for the development of a detached two storey dwelling together with a detached garage within the appeal site. The proposal before me though, is taller, longer and of a different plan form to that previously approved. The main issue however remains whether the current proposal would preserve or enhance the character or appearance of the conservation area.
10. It is evident from the submissions before me, and from observations during the course of my site visit, that the character of this particular part of the conservation area is changing, and indeed has changed subtly over time.

Whilst the site is located in an undeveloped, green pocket amongst the houses fronting the East End and Back Lane, it is also clear that other, ongoing, development is likely to have an influence on the character, and indeed openness, of this part of the village and conservation area.

11. The principle of development within the open area between Back Lane and East End has clearly been previously established, be that historically with the mid-20<sup>th</sup> century housing further to the east of the appeal site, or by the current development to the west of the appeal site. Furthermore, the recently approved extant permission for this site appears to confirm the acceptability of developing this area.
12. I agree, and the current proposal builds upon principles established by the extant scheme, notably a strong north-south axis to the building, stepping down as the site slopes downwards towards Back Lane. Whilst the built form is predominantly linear along the east-west axis of the main road through the village, buildings at right angles to the main road, and with long north-south axis are not without precedent. Indeed, the Ampleforth Conservation Area Assessment and Management Plan Supplementary Planning Document (the SPD) notes as much, albeit in the context of buildings with a street frontage. Nonetheless, I find that the principle of a long north-south building axis to be sufficiently reflective of built form within the conservation area to preserve the character and appearance of the conservation area.
13. The SPD identifies the role of the wider rural setting in defining Ampleforth's character, particularly the ability to glimpse views through and over buildings to the countryside below. One such view is that experienced from Back Lane, looking south across the valley. Whilst these views are typically not experienced from the main road itself, at least from within the eastern part of the conservation area, private views from the rear of properties in this area are possible, as evidenced in the submissions of a third party. However, I find that the proposal before me would not materially affect this general characteristic, nor indeed the "important view and vista" that the SPD identifies.
14. Having established with the previous grant of planning permission that the extant proposal would not harm the character or appearance of the conservation area, I find little of substance between the two proposals in terms of impact on the private views described above. I accept that the proposal before me would be taller, albeit only slightly so, than the previously approved scheme. However, the general fall in the land from East End to Back Lane is pronounced and significant. As a consequence the site sits at a level below that of the buildings on East End, such as the adjacent College Garth.
15. The intervening rear entrance lean-to would serve to provide a degree of separation between the site boundary and the main two storey gable whilst the single storey dining room would relate well in terms of scale with the stone boundary wall between the site and College Garth. The stepping down of the building along the length of its long axis would minimise the extent to which its length would intrude into views over the site and towards the far hills. The proposed dwelling would not therefore compromise the nature or character of the views through and over buildings towards the countryside beyond, as identified and described in the SPD. Furthermore, the proposed dwelling would have no impact upon the views across the valley from Back Lane itself, whilst its form and relationship with Martlet House would be such that it would not

- adversely impact upon longer views into the village and conservation area from the south.
16. Much is made, by both parties, of the relationship between the appeal site and the proposed dwelling, and College Garth, particularly with regard to the merits of the previously approved scheme. However, for the reasons set out above I find that the proposed dwelling would not undermine the prominence of those buildings higher up the slope, nor would it overpower those lower down on Back Lane.
  17. In terms of the site's relationship with the street and plot pattern within the conservation area, I see no material difference in this respect between the current proposal and that previously found to be acceptable. I find the appellant to have satisfactorily demonstrated a design underpinned by vernacular architecture and features, and acknowledged as such by the Council, and which draws upon such factors previously found to be acceptable by the Council. Whilst the proposal now before me is larger than that previously considered favourably, I nonetheless find it to be sufficiently well articulated by the stepping down of the building to follow the falling ground levels within the site.
  18. Subject to suitably worded conditions, I am satisfied that the construction materials would be as reflective of local distinctiveness as I have found the overall design approach to be. Having regard to the nature and character of the areas surrounding the appeal site, and for the reasons set out above, I do not find the proposal to be harmful to either the character or the appearance of the conservation area. Further, I find that the proposal would not adversely affect views into, or out of, the conservation area, particularly those noted in the SPD.
  19. For these reasons therefore, I find that the proposal would preserve the character and appearance of the Ampleforth Conservation Area. In so doing, I also find that the proposal would accord with policies SP12, SP16 and SP20 of the Ryedale Local Plan Core Strategy (the CS) which together seek to conserve and enhance Ryedale's historic environment, create high quality durable places that reinforce local distinctiveness and which respect the character and context of the immediate locality.

*Affordable housing and open space, recreation and leisure facilities*

20. As noted above, planning permission exists for the erection of a four bedroom dwelling with detached double garage. Both parties accept that the principle of residential development has therefore been established on the appeal site and, as that permission remains extant, I have accorded its presence significant weight in my judgement.
21. That permission exists without securing contributions towards affordable housing, or open space, recreation or leisure facilities. Indeed, at the time of the Council's determination of the proposal currently before me, the effect of the Written Ministerial Statement of November 2014<sup>1</sup> in respect of small sites was such that the Council did not apply the provisions of CS policies SP3 and SP1 which seek to secure contributions towards such facilities.

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<sup>1</sup> Written Ministerial Statement and changes to Planning Practice Guidance, 28 November 2014

22. However, following a successful legal challenge<sup>2</sup> to that statement on 31 July 2015 the Council confirmed that they now wish to apply full weight to the provisions of CS policies SP3 and SP11, and that contributions should be sought in respect of the current proposal.
23. I note the timeline of the various documents referred to by the Council in setting out their revised stance on these matters. I note also that these policies were not referred to, or submitted with, the Council's initial appeal submissions and consequently the appellant was not able to respond to these matters in their grounds of appeal. Notwithstanding this, the policies nonetheless form part of the development plan and must be taken into consideration as part of the appeal proposals before me. I am, however, satisfied that there has been suitable opportunity for the appellant to be able to respond to these matters.
24. The Council have provided a figure for contributions towards affordable housing and open space, recreation and leisure facilities, based upon the provisions of CS policies SP3 and SP11. However, no evidence to demonstrate levels of local need in terms of the affordable housing contributions has been put forward, nor have any deficiencies in open space, recreation or leisure facilities been identified or submitted in support of the contribution towards those matters. Moreover, no evidence has been provided with regard to the pooling of such contributions.
25. As noted above however, the extant scheme has no such requirement to make any such contributions, and I have not been presented with any argument to suggest that that scheme would not, or could not, be built out. I accept that no mechanism to secure contributions has been put forward in this instance either. Whilst I note the appellant's suggestion that the mechanism to ensure contributions could be secured by appropriate planning conditions, Planning Practice Guidance recognises that such an approach is unlikely to be appropriate in the majority of cases. It notes that exceptional circumstances might exist such that an appropriately negatively worded condition could be applied, and this is qualified by reference to application to "more complex" or "strategically important" development. It has not been argued that the current proposal is either however, and so I find the use of a condition for such purposes to be inappropriate in this instance.
26. It seems to me therefore that, in this particular case and on the basis of the submitted evidence, it has not been adequately demonstrated that the contributions would be necessary to make the development acceptable, or that they would be directly related to the development, and fairly and reasonably related in scale and kind. I also attach significant weight to the fallback position presented by the extant planning permission for the erection of a 4 bedroom dwelling on the appeal site, in relation to which no such contributions are to be sought.
27. Consequently, and notwithstanding the aims of development plan policy, specifically CS policies SP3 and SP11, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with regulation 122 of the Community Infrastructure Levy Regulations 2010. For these

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<sup>2</sup> West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015], 31 July 2015

reasons, the absence of a planning obligation does not weigh against the development.

### **Other Matters**

28. I have noted the concerns raised regarding the accuracy of the submitted tree survey and arboricultural report. However, the effect of the proposal upon the existing tree and vegetation cover on, and around, the site did not form a reason for refusal. I agree with the Council in this respect, and that this matter can be appropriately dealt with by planning condition, and so I accord these concerns only limited weight.

### **Conditions**

29. I have had regard to the conditions suggested by the Council. In addition to a time limit condition, I agree that a condition specifying the relevant drawings is necessary in order to provide certainty.
30. Those conditions relating to construction materials (including the construction of sample panels), fenestration details and boundary treatments are, with slight modification, appropriate in the interests of character and appearance. So too are conditions relating to landscaping details and the provision of adequate protection of those trees and hedgerows shown as being retained on the relevant drawings. A condition relating to details of finished ground floor levels is also necessary in the interests of character and appearance and I have imposed this condition, again with minor modifications to its wording.
31. I am not persuaded that it is necessary to remove all permitted development rights, as the Council suggests. Planning Practice Guidance states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Since the Council have not sought to demonstrate that exceptional circumstances exist, I have not imposed the suggested condition.

### **Conclusion**

32. For the reasons set out, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Graeme Robbie*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 4255 EX10 01; 4255 EX20 01; 4255 AR20 01; 4255 AR 20 02; AR20 03; AR30 01; AR30 02; AR30 03; AR30 04 and AR40 01
- 3) No development shall take place until details and samples of the materials to be used in the construction of the external walling of the dwelling hereby approved have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved sample details.
- 4) No development shall take place until a sample panel of the agreed materials to be used in the construction of the external walling of the dwelling hereby approved have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre by 1 metre. The development shall be constructed in accordance with the approved sample panel, which shall not be removed from the site until completion of the development.
- 5) Prior to the commencement of the development hereby permitted, details of all windows and doors, including means of opening, depth of reveal and external finish shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No development shall commence until there has been submitted to, and approved in writing by, the local planning authority a scheme of landscaping and planting, which shall include details of the boundary treatment. The scheme shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed, and the details of the proposed boundary treatment. The submitted plans and / or accompanying schedules shall indicate numbers, species, heights on planting and positions of all trees and shrubs, including existing items to be retained, and a schedule of materials. All planting, seeding, turfing and / or erection of the boundary treatments shall be carried out during the first planting and seeding seasons following occupation of the dwelling, and any trees or plants which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting or seeding season with others of similar size and species.
- 7) Prior to the commencement of the development hereby approved, those trees and hedgerows shown to be retained on drawing 4255 AR 20 02 shall be protected by fencing in accordance with British Standard BS5837:2012 Trees in relation to design, demolition and construction – Recommendations.

- 8) No development shall take place until full details of the finished floor levels, above Ordnance Datum, of the ground floor of the hereby approved dwelling, in relation to existing ground levels have been submitted to, and approved in writing by, the local planning authority. The development shall thereafter be carried out in accordance with the approved levels.