



Appeal Decision

Hearing held on 19 August 2008

Site visit made on 19 August 2008

by **Malcolm Rivett** BA (Hons) MSc MRTPI

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

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Decision date:
4 September 2008

Appeal Ref: APP/Y2736/A/08/2072443

**North Yorkshire County Council Highways Depot, Manor Vale Lane,
Kirkbymoorside, YO62 6EG**

- 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 North Yorkshire County Council against the decision of Ryedale District Council.
- The application Ref 08/00019/MOUT, dated 4 January 2008, was refused by notice dated 13 March 2008.
- The development proposed is redevelopment of existing highways depot to residential use.

Application for costs

1. At the Hearing an application for costs was made by North Yorkshire County Council against Ryedale District Council. This application is the subject of a separate decision.

Procedural matters

2. The application was made in outline with all detailed matters, other than layout, reserved for future consideration and I have determined the appeal on this basis. At the Hearing the appellant indicated that it would be willing to alter the layout if necessary although, despite the tenor of its written rebuttal statement, it would wish the development to continue to comprise 4 three bedroom townhouses, 4 four bedroom houses and 4 three bedroom houses. I address the appellant's arguments about possible changes to the submitted layout plan at relevant points in this decision.

Decision

3. I dismiss the appeal.

Main issues

4. The main issues of the appeal are the effect of the proposal on:
 - the character and appearance of the area, including that of the Fringe of the Moors Area of High Landscape Value (AHLV);
 - the living conditions of its potential occupants with particular regard to light, outlook and noise/disturbance;
 - affordable housing needs in the area; and

RYEDALE D.C.

- 8 SEP 2008

DEVELOPMENT CONTROL

- the ecology of the site.

Reasons

Character and Appearance

5. The Local Planning Authority (LPA) is concerned that the layout of the development, with prominent garages and relatively large front gardens, would be out of keeping with surrounding residential development. This part of Kirkbymoorside has a variety of residential layouts and there are a number of dwellings with large front gardens and prominent garages. Therefore I am not persuaded that the layout of the proposal would be inappropriate in relation to other residential development nearby. However, the long and narrow appeal site, confined between the tree-topped, cliff faces of a disused quarry has a unique and attractive character, which also defines the part of the Fringe of the Moors AHLV within which a substantial section of the site lies. Whilst the existing buildings are not attractive they are redolent of the site's industrial heritage. Furthermore, they are mostly single storey and are of limited number and size, particularly in the AHLV part of the site. Consequently, they enable clear views to be had of the east quarry face from Manor Vale Lane and, in my view, they, and the stored materials, do not significantly undermine the site's distinctive landscape.
6. In contrast, and whilst I accept that some people would consider them to be more attractive than the existing industrial buildings, the closely spaced dwellings/garages of the proposal would largely obscure views from the road of the east quarry face. Moreover, the proposed layout, with its staggered building line and mix of terraced, semi detached and detached dwellings of varying orientation, and mostly at a slight angle to the sheer cliff, would undermine the presence of the quarry face and consequently the distinct character of the site.
7. The appellant argues that the layout would "break up" the development although in my view its suburban estate style layout would appear alien in its disused quarry setting, neither reflecting its industrial heritage nor enhancing its landscape features. Consequently, whilst I recognise that the submitted landscape assessment identified that it would enhance the AHLV, I conclude that the proposal would be harmful to the character and appearance of the site, including both the parts of it within Kirkbymoorside's defined development limits and the parts within the AHLV. Thus the proposal conflicts with policies H7(ii) and ENV3 of the adopted Ryedale Local Plan which indicate that housing development within development limits should reflect the character of the settlement and that development in an AHLV should not detract from its landscape quality.

Living Conditions

8. The majority of the dwellings would be located in close proximity to the site's east quarry face. Given the height of the cliff and the dense line of trees on top of it, I envisage that the outlook from, and light in, the rear facing rooms of most of the properties would be so restricted as to provide unacceptable living conditions for the residents of the dwellings. I appreciate that the trees on the cliff top are deciduous, although their branches appear to be dense and I envisage that, together with the cliff face itself, they would restrict light to the

properties even when not in leaf. I recognise that the positioning of windows does not form part of this outline application. However, given the shape of the properties and the presence of adjacent dwellings/garages to the side elevations of most of the houses (as shown on the layout plan), it appears to me that, despite them facing south west, it would not be possible to design the majority of the proposed properties such that all their main rooms would receive adequate light and provide a satisfactory outlook.

9. At the Hearing the appellant argued that the layout could be altered to address this problem. However, I am not persuaded that 12 houses of the types/sizes proposed (which the appellant states it is committed to), and of a layout providing satisfactory light and outlook for their main rooms, could be accommodated on the site.
10. The Kirkbymoorside Brass Band Practice Hall is opposite the site and its large, single glazed windows would be close to the proposed houses and within 15m of dwellings nos 4 and 5. Based on what I have read and heard I envisage that the sound of the band practising would be heard in most of the proposed properties. Whilst I accept that some people would enjoy the music I consider it likely that it would cause significant annoyance and disturbance to many, particularly when heard repeatedly for several hours most evenings.
11. The appellant argues that it is not aware of complaints about the noise of the band from existing residents, although I note that none live within 15m of the hall and that, unlike the proposed dwellings, the existing properties closest to it (1 Manor Vale Lane and houses in Manor Gardens) do not face the practice hall's windows. It is also contended that potential residents of the development would be aware of the presence of the practice hall and would not choose to live there if they believed they would be disturbed by it. However, it is stated that the development is designed to help meet housing (including affordable housing) needs in Kirkbymoorside and I consider that it would be inappropriate for it to be restricted to meeting the housing needs of those who would be happy to hear brass band music on a frequent basis.
12. The appellant argues that the affected houses could be designed with measures to protect their occupants from the noise, although I am not persuaded that this is practical: even if double or triple glazing in the houses were to be effective in blocking out the music, the residents would be unable to have their windows open in warm weather and, in any case, they would not be able to enjoy their gardens on summer evenings without the disturbance of the band. At the Hearing the appellant referred in vague terms to other possible measures to baffle the noise although I am not convinced that a mound or bund could protect the houses and their gardens whilst still providing the necessary access to, and outlook for, the properties.
13. The LPA argues that it would be necessary to address the disturbance problem at its source and, with reservations, has suggested a negatively worded condition requiring noise insulation and air conditioning works to be carried out to the practice hall. I agree that, in principle, such a condition could address this problem. However, I understand that no measurements of the noise levels have been taken, nor has any detailed assessment been made of the extent to which the hall can be noise insulated. Thus, I cannot be assured that noise insulation works would be effective in addressing the problem. Furthermore to

RYEDALE D.C.
- 8 SEP 2008

meet the tests of specificity of Circular 11/95 I consider that it would be necessary to specify the degree of noise reduction to be achieved by the works although I have no information to suggest what this reduction should be. Consequently, I cannot be assured that the suggested condition would be effective in ensuring that the living conditions of the residents of the proposal would not be harmed by the presence of the practice hall.

14. Thus, with regard to light, outlook and noise/disturbance I find that the proposal conflicts with policy H7(v) of the Local Plan which indicates that new residential development should provide a satisfactory standard of residential amenity. I also agree with the LPA that the proposal conflicts with the guidance in Planning Policy Guidance 24: Planning and Noise to locate housing away from sources of significant noise unless the impact of the noise can be mitigated.

Affordable Housing

15. The affordable housing policy of the November 2004 adopted Ryedale Local Plan Selective Alteration indicates that 35% of dwellings provided in new housing developments of 5 dwellings or more should be affordable units. The appellant has indicated that it is its intention that 40% of the proposed dwellings would be affordable homes. Whilst not specifically referred to in the selective alteration policy, policy H7(vi) of the Local Plan states that residential development should take appropriate account of local housing need in terms of the type of dwellings to be provided. The Ryedale District 2006 Housing Needs Assessment Final Report (November 2007) indicates that in the period 2007-2012 the annual requirement for affordable dwellings in Kirkbymoorside is 17, 16 of which need to be 1 or 2 bedroom properties.
16. The proposal solely comprises 3 and 4 bedroom properties. Consequently, whilst I am not persuaded that the scheme strictly conflicts with the wording of the selective alteration affordable housing policy, I consider that the proposed housing types would not make an effective contribution towards the policy's objective of ensuring that housing developments meet local affordable housing needs. It therefore conflicts with policy H7(vi) as set out above. At the Hearing the appellant did not dispute this point although in its written statement it argues that affordable housing needs could be met by the phased release of two 3 or 4 bedroom properties per annum. However, such a release would provide double the required number of 3+ bedroom properties whilst meeting none of the annual need for 16 one/two bedroom dwellings.

Ecology

17. The Ecological Scoping Report, submitted as part of the planning application, identifies the presence of bats in the area and that the cliff faces immediately adjacent to the site are likely to be used by bats for foraging and as "commuting" routes. The use of the existing buildings on the site as roosts is not discounted. The report recommends a comprehensive survey of bats in the area prior to the commencement of works. I note that, with specific reference to this report, Natural England (NE) has not objected to the proposal. However, to my mind this response is somewhat inconsistent with the annex to NE's letter which states that prior to determination of a planning application a robust survey should be carried out, identifying the presence of protected species on a

site, the likely impact of the development and the strategy for mitigation. Such an approach accords with the Government Circular Biodiversity and Geological Conservation – Statutory Obligations, referred to by the LPA.

18. The appellant argues that such surveys/implementation of mitigation measures could be required by a condition of outline planning permission. However, given that I have no information to assure me that any, and as yet unknown, effects of the scheme on bats can be satisfactorily mitigated, I consider that it would be inappropriate to grant outline permission for the proposal subject to such a condition. Based on the information before me I cannot be assured that the proposal would not harm the ecology of the site and I find therefore that it potentially conflicts with Planning Policy Statement 9: Biological and Geological Conservation which indicates that the aim of planning decisions should be to prevent harm to biodiversity interests.

Other matters

19. One of the reasons for refusal was that part of the site is outside the defined development limits of Kirkbymoorside although at the Hearing the LPA stated that, other than in relation to its effect on character and appearance/the AHLV, no demonstrable harm would be caused by this. The LPA also raised concerns about the tenure of the affordable dwellings although in its written evidence it stated that this could be controlled by condition.
20. I recognise that the proposal would make efficient use of previously developed land in a sustainable location, that it would make a contribution towards overall housing needs and that it would be unlikely to exacerbate problems of flooding. I also appreciate that it would enhance the appearance of the Site of Importance for Nature Conservation section of the site and that it has the support of a number of local residents, particularly in removing an industrial use. However, I consider that these matters do not outweigh the proposal's failure to make an effective contribution to meeting affordable housing needs and the harm I have found it would cause to the character and appearance of the site/AHLV, the living conditions of its residents and, potentially, to the ecology of the site.
21. The appellant points to paragraph 71 of Planning Policy Statement 3: Housing (PPS3) which indicates that, where an authority cannot identify a five year supply of deliverable housing sites (which I understand to be the case in Ryedale) planning applications for housing should be considered favourably. However, it indicates that regard should also be had to achieving high quality housing reflecting the accommodation requirements of specific groups and in this respect the proposal fails the tests of the PPS.
22. Furthermore, and having regard to the guidance in PPS3 concerning reallocation of industrial land for housing, it appears likely to me that it would be possible to develop the site for housing in a way which would not result in the harm I have found this proposal would cause. This has added weight to my decision. That the LPA did not give the appellant the opportunity to respond to some of its concerns prior to determining the application is not good reason to allow the appeal given the harm I have identified the proposal would cause, having regard to the further justification of the scheme put forward by the appellant.

RYEDALE D.C.

Conclusion

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

Malcolm Rivett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

T Hobday	Jacobs UK Ltd, 1 City Walk, Leeds, LS11 9DX
A Martin	Jacobs UK Ltd, 160 Dundee Street, Edinburgh, EH11 1DQ

FOR THE LOCAL PLANNING AUTHORITY:

Paul Simpson	Ryedale District Council
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INTERESTED PERSONS:

J Woodward	Kirkbymoorside Band, Plum Tree House, West End, Kirkbymoorside, YO62 6AF
M Dowson	1 Manor Vale Lane, Kirkbymoorside, YO62 6EG

DOCUMENTS

- 1 Notification Letter of date/time/venue of Hearing
- 2 Ryedale Local Plan Selective Alteration – Affordable Housing Policy
- 2a Ryedale District Council 2006 Housing Needs Assessment
- 2b Extract of Ryedale Local Plan – policy H13
- 3 Schedule of Planning Conditions
- 4 Written application for costs on behalf of the appellant
- 5 Written rebuttal of costs application by LPA

RYEDALE D.C.

8 SEP 2008

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