

Parish: Bedale
Ward: Bedale
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Committee Date: 17 September 2019
Officer dealing: Mrs H Laws
Target Date: 17 September 2019

19/01511/FUL

Residential development comprising 14 dwellings

At: Bedale Allotment Association, The Allotment Gardens, Masham Road, Bedale
For: Arncliffe Homes Ltd

This application is referred to Planning Committee as Members refused planning permission for an identical scheme in April 2019

1.0 SITE CONTEXT AND PROPOSAL

- 1.1 This planning application seeks permission for the construction of 14 dwellings on an area of land that lies towards the south western end of Bedale, to the rear of dwellings on the eastern side of Masham Road and the allotment gardens. A children's play area lies on the southern side of the site. Vehicular access to the site is from the relatively new housing development on Calvert Way. The majority of the site (i.e. excluding a roughly triangular portion between the play area and 14 & 16 Pinewood Grove with a link to Pinewood Grove) is allocated in the Local Development Framework for housing (BH1). The land is currently overgrown and fenced to all sides and was last used as allotments. To the north east of the site lies undeveloped scrubland that forms the remainder of allocation BH1.
- 1.2 The location plan shows the extent of the site boundary covering an area of 0.48 hectares. The application has been submitted with a Planning Policy Statement; a Design and Access Statement; a Landscape layout; a Preliminary Ecological Appraisal; a Flooding and Drainage Statement; and a Stage 1 & 2 Desk Study and Geo-environmental Report.
- 1.3 It is proposed to access the site by the vehicular access from the existing hammerhead between numbers 11 and 15 Calvert Way, across a tarmacked area and a public right of way.
- 1.4 The scheme proposes seven pairs of semi-detached units; four of which would be two bedroomed and ten of which would be three bedroomed. None of the dwellings would have garages but all would have driveways that extend alongside each of the houses, providing at least two parking spaces per dwelling. The houses would all have hipped roofs and front porches and be finished in brickwork and concrete pantiles.
- 1.5 A landscaping scheme has been submitted, which proposes the planting of trees and shrubs within and along the edge of the site. Existing hedgerows bounding the site would be retained.
- 1.6 There are no affordable houses proposed as part of the scheme. A legal opinion has been received on behalf of the applicant from Walker Morris LLP which considers that, based on LDF Policy CP9, no affordable housing would be required.
- 1.7 As identified in Section 2.0 below, the majority of the site is allocated (BH1) for housing development within the Local Development Framework, as part of a larger site area for around 55 dwellings.
- 1.8 The layout plan retains a strip of land between this and the adjacent site.

2.0 RELEVANT PLANNING & ENFORCEMENT HISTORY

2.1 As noted in paragraph 1.1, the majority of the site is allocated for housing development within the Council's Local Development Framework and the requirements are as follows:

BH1 Masham Road, Bedale (1.5ha)

This site is allocated for housing development in Phase 1 (up to 2016) subject to:

- i. development being at a density of approximately 35 dwellings per hectare, resulting in a capacity of around 55 dwellings (of which a target of 40% should be affordable);
- ii. types and tenure of housing developed meeting the latest evidence of local needs;
- iii. an alternative location being provided for the current allotments occupying the site;
- iv. vehicular access to the site being taken exclusively from Masham Road through the development to the south;
- v. contributions from the developer providing improvements to pedestrian and cycle access in the area, particularly retaining the public right of way across the site and along Firby Road to local facilities;
- vi. contributions from the developer towards providing public open space, necessary infrastructure improvements, particularly increasing sewerage and sewage disposal capacity; and
- vii. contributions from the developer towards the provision of additional school places and local health care facilities as necessary.

2.2 The site is smaller (0.48ha) than the allocated site (1.5ha). This is discussed in detail in section 5 below (allotments are retained but only on part of the site).

2.3 18/00592/FUL – Residential development for the construction of 14 dwellings. Permission refused 29/4/2019 for the following reasons:

1. The proposed development fails to provide the required level of affordable housing and as such is not considered to accord with the requirements of Allocations Document Policy BH1, which requires 40% of the housing within the allocation site to be affordable.
2. The proposed development fails to meet the requirements of allocation BH1 as no alternative location is being provided for the allotments which occupied the site. The investment into the remaining allotments is not considered to be sufficient to off-set the harm caused by the loss of the allotments, resulting from the development of this site.
3. Due to the lack of proposed improvements to the pedestrian and cycle access in the area as required by the allocation, it is considered that the proposed development does not result in a sufficiently sustainable form of development, in terms of its connectivity to local services, by sustainable means of transport.

3.0 RELEVANT PLANNING POLICIES

3.1 The relevant policies are:

Core Strategy Policy CP1 - Sustainable development
Core Strategy Policy CP2 - Access
Core Strategy Policy CP4 - Settlement hierarchy

Core Strategy Policy CP5 - The scale of new housing
 Core Strategy Policy CP5A - The scale of new housing by sub-area
 Core Strategy Policy CP6 - Distribution of housing
 Core Strategy Policy CP7 - Phasing of housing
 Core Strategy Policy CP8 - Type, size and tenure of housing
 Core Strategy Policy CP9 - Affordable housing
 Core Strategy Policy CP16 - Protecting and enhancing natural and man-made assets
 Core Strategy Policy CP17 - Promoting high quality design
 Core Strategy Policy CP18 - Prudent use of natural resources
 Core Strategy Policy CP21 - Safe response to natural and other forces
 Development Policies DP1 - Protecting amenity
 Development Policies DP4 - Access for all
 Development Policies DP6 - Utilities and infrastructure
 Development Policies DP8 - Development Limits
 Development Policies DP13 - Achieving and maintaining the right mix of housing
 Development Policies DP15 - Promoting and maintaining affordable housing
 Development Policies DP30 - Protecting the character and appearance of the countryside
 Development Policies DP31 - Protecting natural resources: biodiversity/nature conservation
 Development Policies DP32 - General design
 Development Policies DP33 - Landscaping
 Development Policies DP43 - Flooding and floodplains
 Size, type and tenure of new homes Supplementary Planning Document (SPD)
 National Planning Policy Framework

4.0 CONSULTATIONS

- 4.1 Bedale Town Council – continues to have no objection but makes the following comments:
- The design and layout of the proposed development is attractive, with houses appropriate to the town;
 - However, it is disappointing that there is no affordable housing within this development, and councillors are keen that the overall intention of parcel BH1 with regard to affordable housing is not lost as the land gets subdivided. The advocacy provided by the applicants has not changed the council's opinion on this point; and
 - The Council remains keen that access to potential future development sites immediately to the north of this site is not prejudiced by this development.
- 4.2 Highway Authority – the applicant has included the land outside 11 Calvert Way within the red line boundary, the owner of 11 Calvert Way has maintained and planted this area with a small boundary hedge. It is to be noted that this area is beyond the current adopted highway boundary and therefore this is a private matter which should be addressed between the applicant and the owner of 11 Calvert Way. The applicant shall also consider the existing surfaced footpath running between the application site and number 11 and 15 Calvert Way. Proposals should safely accommodate pedestrians, including crossing points either side of the main access to the proposed development. An existing unmade path, accessed from Pinewood Grove is located to the North Eastern boundary of the site. The landscape layout plan shows this area to be a planted area therefore proposals for this pathway shall be confirmed. The site layout plan shows clear space for up to 2 spaces per property which meets the requirement of the Highway Authority. Conditions are recommended.
- 4.3 Yorkshire Water – conditions are recommended.

- 4.4 Housing Development Officer - The developer is offering 0% affordable housing in line with his justification that the contribution is contrary to existing Local Plan policies. However, the revised July 2019 National Planning Policy Framework (NPPF) has superseded this, resulting in a requirement for affordable housing on residential schemes of 10 or more homes. The affordable housing requirement in the Bedale sub area under CP 9 is 40%. Provision for affordable housing should be made on site. If this is not viable a commuted sum in lieu of affordable housing should be made.
- 4.5 Environmental Health Officer – A report submitted as part of the application identifies lead contamination at one sample location and recommends remediation to ensure a safe development. This is agreed and appropriate conditions are recommended.
- 4.6 Bedale Allotment Society – have submitted the following comments:
- Our Society fully supports the application. We were concerned that there appeared to be a misunderstanding about our allotment site and the agreement with the current landowners (Leeds Diocese) and provide the following clarification:
1. The existence, position and form of the allotments has a lot of support within the Bedale community
 2. The members of the Bedale Allotment Society are entirely happy with the agreement reached with the landowner
 3. The 'new' allotment site is now 4 years old and is living up to its designation as a Site of Community Value
 4. We are very satisfied that Arncliffe Homes is a company that we could work with during the building phase of the adjacent housing site
- 4.7 Public comments – none received.

5.0 ANALYSIS

- 5.1 The principle of development has been established with the allocation of this site as part of a larger site for residential development. The remaining planning issues relate to (i) the principle of allowing a part of the land allocated to be developed, including the loss of part of the allotments, and pedestrian and cycle access improvements; (ii) the requirement for affordable housing provision; (iii) the impact on the character and appearance of the area; (iv) the design and housing mix within the development; (v) the impact on neighbour amenity; (vi) ecology; and (vii) highway matters.

The Principle of Development

- 5.2 The LDF Core Strategy was adopted in 2007 and provides the basis for the scale and distribution of housing development within Hambleton. Following this, the Allocations DPD identifies sites to meet and deliver the targets and objectives as set out within the Core Strategy. As noted in paragraph 2.1 above, 1.5ha of land is allocated for new housing under Policy BH1, of which the majority of this site forms a part, and which states that the land is allocated for housing for release in Phase 1 (up to 2016).
- 5.3 The site allocation consists of an area that includes the allotment site in its entirety as well as an area of adjacent scrubland within separate ownership. The majority of the application site forms only part of the allocated BH1 site; an additional area in the south eastern corner of the application site does not lie within the boundary of the

allocation but it forms part of the same site physically. The application site covers an area of 0.48ha.

- 5.4 The allocation sought the replacement of any lost allotments in an alternative location. Strong objections to the relocation of the allotments elsewhere in Bedale, including by the Allotment Society, were received by the landowner and the decision was made to retain the use within the boundary of the original allotment site. The allotments have been consolidated and improved within part of their original site and the Allotment Society does not consider the reduction in the size of area as a disadvantage. The existing location is sustainable and is surrounded by existing and proposed housing meaning it remains an integral part of the community. As such, no housing is now anticipated on this part of the allocation site.
- 5.5 One of the reasons for the refusal of the previous planning application related to the loss of allotment area. Improvements to the allotments have been made, which offset the lack of provision, meaning that the remaining part of the site is much more productive than they were previously. Support has been received from the Allotment Society itself which consider that the investment made by the landowner, resulting in vastly improved facilities, more than compensates for the reduced space. Individual plot sizes have been reduced but this has resulted in them being more productive. The landowner is gifting the allotments to the Society.
- 5.6 The remaining part of the allocation to the north east, the undeveloped scrubland, is not included within this application as the site is in separate ownership and is likely to be developed separately. The applicant is unwilling to remove the strip of land and extend the access road to the end of the site as the developer is contractually obliged to provide a 1m buffer between the land owned by the landowner and the adjacent site.
- 5.7 The provision of the strip does not preclude access in the future into the adjacent site but would require negotiation between the landowners. Details of case law have been provided, which confirms that where there would be no technical impediments to the extension of the access into the other site, the issue to be resolved is a matter for the landowners and is a private commercial matter rather than material to the planning decision.
- 5.8 One of the criteria within the Allocations Policy is a requirement for a contribution towards providing improvements to pedestrian and cycle access in the area. The Community Infrastructure Levy (CIL) introduced by the Council in April 2015 is the only current mechanism for general infrastructure payments, including schemes like the Bedale Footpath and Cycleway. A contribution for off-site work would not therefore be required from the developer.
- 5.9 On the basis that the site has gone through an extensive site allocations process; that the community has had the chance to comment on that site allocation process; and that the Development Limits boundary includes the application site (including the element not included within the allocation), it is considered that the development has in principle support.

Affordable Housing Provision

- 5.10 The majority of the site is within the allocation site of Policy BH1, which is identified for housing subject to development being at a density of approximately 35 dwellings per hectare, resulting in a capacity of around 55 dwellings for the site as a whole. The proposed scheme, on the smaller part of the site, would result in a density of 29 dwellings per hectare.

- 5.11 The Policy states a target of 40% provision of affordable housing. The applicant is not proposing the provision of any affordable housing nor any contribution towards affordable housing. The applicant's position is not based on any viability impact of providing affordable housing but on their belief that the affordable housing requirement of allocation policy BH1 cannot be applied to the application.
- 5.12 Within Bedale affordable housing can also be sought on schemes of 15 or more units, or sites of 0.5 hectare or more under Policy CP9. The application proposes one dwelling less than the 15 unit threshold and the site area, at 0.48 hectare, is just below the Local Plan site area threshold above which affordable housing contributions are required under Policy CP9. However, the application site is smaller than the allocation site, which as a total exceeds Policy CP9's threshold for affordable housing in terms of site area and number of units.
- 5.13 Artificial subdivision of the allocation site to avoid affordable housing provision would not be acceptable. However, in this instance it is considered that the application site is independent of adjacent land within the allocation site in terms of ownership, and therefore the submission of an application that does not include the adjacent part of the allocation site is not viewed as an artificial subdivision.
- 5.14 The applicant has submitted details of a High Court judgement following an appeal decision relating to two adjacent development sites in Westminster in which the need for affordable housing was considered. It is the applicant's view that this judgement means that their site should be treated as independent of the remainder of the allocation site on its own merits and in accordance with Policy CP9. This conclusion would mean that affordable housing could not be required as part of the proposed development because the proposal falls below the thresholds set in Policy CP9.
- 5.15 However, the case law provided related to a windfall site and does not relate to an allocated site such as the application site. Legal advice provided to the Council confirms that there is a distinction between allocated and windfall sites and that the requirements of the allocation should not be set aside and the proposal should not be assessed against Policy CP9 alone, as if a windfall site. This is apparent from the High Court judgement in which it is stated:

If this were a site allocated for residential use in the USP (i.e. City of Westminster's Local Plan) its boundaries would be defined and any potential proposal to develop only parts of it could reasonably be expected to provide a proportionate amount of affordable housing.

The judgement provides support for the applicant in respect of the portion of the site not covered by the allocation, which is approximately 0.1 ha, roughly a fifth of the application site. However, the judgement does not support the applicant in respect of the majority of the site and BH1's requirement for 40% affordable housing clearly applies to this land.

- 5.16 Dividing the application site according the approximate proportions that are within the allocation (0.4ha) and beyond (0.1ha) and considering the submitted layout plan it is considered that Policy BH1 applies to ten of the dwellings and therefore that four of these units should be affordable housing.
- 5.17 Following this judgement, the Allocation Policy (BH1) should therefore carry significant weight in the assessment of this application and this is consistent with the normal expectation that, the more site-specific a policy is, the greater the weight that should be afforded to it.
- 5.18 Information has also been submitted by the landowners of the application site (Diocese of Leeds) regarding the gifting of part of the allocated site to the Bedale

Allotments Society Ltd in addition to making a significant financial contribution to the Society. It is considered by the Diocese that this should be taken into account in the decision making process “otherwise the Diocese, as a charity, will suffer a substantial loss in financial receipts compared to the owners of the remainder of the allocation.” These benefits have not, however, been quantified to provide justification for the absence of affordable housing provision; any proposed development on any other part of this particular Allocation would also be subject to the same conditions, requiring 40% affordable housing provision.

- 5.19 Notwithstanding the contribution from the Diocese, the Allocation Policy required replacement allotments to be provided elsewhere, which would have required the Diocese or a developer to incur costs. The applicant’s argument that affordable housing cannot be required is not considered valid for the majority of the site, where Policy BH1 holds sway, and the proposal therefore fails to comply with Development Plan requirements for the provision of affordable housing.

Impact on the character and appearance of the area

- 5.20 The suitability of the site for residential development has been assessed during consideration of the Allocations DPD. The site is surrounded by other residential uses and would be a sustainable form of development.
- 5.21 The existing site is of no visual merit and its development would not result in the loss of an important area of open space. The proposed linear form of the development reflects the shape of the site with a relatively low density development to either side of an S-shaped central access road, which continues the existing cul-de-sac of Calvert Way.
- 5.22 It is considered that the proposed layout would respect the general built form of the town. There is no identified harmful impact to the built or historic environment.
- 5.23 Policy DP8 states that the location of the Development Limits will ensure that development within it will not have a detrimental impact on the character, appearance and environmental quality of the adjacent countryside or otherwise conflict with the environmental policies of the LDF. The proposed development is wholly within the town and would have no impact on the character and appearance of the surrounding countryside.

Design and housing mix

- 5.24 One of Hambleton’s strategic planning objectives, set out in The Core Strategy Local Development Document (2007), is ‘to protect and enhance the historic heritage and the unique character and identity of the towns and villages by ensuring that new developments are appropriate in terms of scale and location in the context of settlement form and character’.
- 5.25 Policies CP17 and DP32 require the highest quality of creative, innovative and sustainable design for buildings and landscaping that take account of local character and setting, promote local identity and distinctiveness and are appropriate in terms of use, movement, form and space.
- 5.26 The National Planning Policy Framework supports this approach and, at paragraph 130, states that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 5.27 The submitted Design and Access Statement concludes that the dwellings would be appropriate within their context and would integrate well into the town of Bedale. The

proposed layout is a traditional cul-de-sac development of semi-detached dwellings, which is common within this part of the town. Although some of the dwellings vary in size, they are of a uniform design, which is different to that of the Calvert Way development where many of the dwellings vary in terms of form, height and design. The scheme would be more in keeping with the older, lower density developments of Masham Road and Grange Road and are therefore considered appropriate for this part of Bedale.

- 5.28 Of the 14 houses proposed ten are three-bedroomed and four are two-bedroomed. All of the proposed units are two-storey, semi-detached properties. Policies CP8 (Type, Size and Tenure of Housing) and DP13 (Achieving and Maintaining the Right Mix of Housing), require proposals for housing to take account of local housing need in terms of the size, type and tenure of dwellings. The provision of two and three bedroom homes is prioritised by the Size, Type and Tenure of New Homes SPD and is considered acceptable in this location.

Impact on neighbour amenity

- 5.29 LDF Policy DP1 requires that all development proposals must adequately protect amenity, particularly with regard to privacy, security, noise and disturbance, pollution (including light pollution), vibration and daylight. The application proposes a layout of semi-detached dwellings fronting onto the newly created access road with adequate separation from each other to respect privacy and outlook.
- 5.30 The pair of semi-detached dwellings at Plots 11 and 12 lie in close proximity to the boundary at the south eastern part of the site. The existing dwelling at number 16 Pinewood Grove lies almost at right angles to the proposed dwellings, facing directly over the rear garden of Plot 11. A 3m tall conifer hedge, which separates the two sites, currently provides the outlook at ground floor level for the existing dwelling and would provide privacy for the new residents. The closest point between the two dwellings lies at approximately 10m but neither the side nor rear elevations are directly in line with the front elevation of number 16 and would not adversely affect amenity to the extent that it would be contrary to LDF Policy DP1.
- 5.31 Should the scheme be approved, it is recommended that a condition be imposed requiring the submission of a management plan prior to building work commencing to control the hours of operation and vehicle movements during the period of construction at the site in order to limit its impact on residential amenity.

Ecology

- 5.32 Policy DP31 of the Development Policies DPD states that "Permission will not be granted for development which would cause significant harm to sites and habitats of nature conservation...Support will be given...to the enhancement and increase in the number of sites and habitats of nature conservation value".
- 5.33 The ecological appraisal submitted with the application concludes that the site currently has a low ecological value with no notable habitats for protected species, particularly due to its separation by roads and existing development from wildlife corridors, although with some potential for nesting birds. It is concluded that the proposed development is unlikely to have a significant adverse effect.
- 5.34 Opportunities for enhancement are included as recommendations, such as the provision of bat and bird boxes and the planting of a species rich hedgerow along the boundaries. An appropriate condition could be imposed to secure the implementation of these measures.

Highway Matters

- 5.35 The Highway Authority initially expressed concern that the land between the existing cul de sac of Calvert Way and the application site was planted and appeared to have been incorporated within the plot associated with 11 Calvert Way. Evidence has been provided that the site does not lie within the ownership of number 11 and therefore would be available for use in the creation of the access into the site. The Highway Authority has confirmed their agreement to the proposed access.
- 5.36 The existing unmade path along the north eastern boundary is not a public right of way; there is already an alternative public right of way along the south western boundary, which provides access through to the southern end of this route from Masham Road and it is not considered that a footpath route at both ends would be necessary.
- 5.37 The Highway Authority raises no objection subject to conditions.

Planning balance

- 5.38 The principle of development on this site is accepted. It is considered that the scheme would provide a suitable form and mix of development on the site. The outstanding matter, which weighs against the proposal, is the absence of any affordable housing provision to reflect the inclusion of the majority of the application site in allocation site BH1, within which 40% of all units should be affordable.

6.0 RECOMMENDATION

- 6.1 That subject to any outstanding consultations the application is **REFUSED** for the following reason:
1. The proposed development fails to provide the required level of affordable housing and as such is not considered to accord with the requirements of Allocations Document Policy BH1, which requires 40% of the housing within the allocation site to be affordable.