
Appeal Decision

Site visit made on 20 December 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 11 January 2017

Appeal Ref: APP/Z4718/W/16/3158591

Land at Lancaster Lane, Brockholes, Holmfirth HD9 7TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr J Wood (Petrian Construction Ltd) against Kirklees Metropolitan Borough Council.
 - The application Ref 2016/90146, is dated 19 January 2016.
 - The development proposed is an outline application for residential development.
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Decision

1. The appeal is allowed and outline planning permission is granted with all matters, other than access, reserved for residential development at Land at Lancaster Lane, Brockholes, HD9 7TL in accordance with the terms of the application, Ref 2016/90146, dated 19 January 2016, subject to the attached schedule of conditions.

Procedural Matters

2. The application was made in outline with all matters apart from access reserved for future determination. A site plan showing the position of the proposed access off River Holme View and an illustrative site layout was submitted with the application which I have had regard to in the determination of this appeal.
 3. The Council indicate that, had it been in a position to determine the application, it would have refused planning permission for reasons relating to the prejudicial effect of the proposed development on the value of the site as open land allocated as Urban Greenspace, whereby the potential exists for the ecology of the site to recover. The loss of the value of the Urban Greenspace was considered to outweigh all other material considerations, including the delivery of new housing.
 4. A signed S106 Unilateral Undertaking (UU) has been submitted by the appellant. This would provide for the provision of a percentage of affordable housing on the site and secure contributions towards open space and education facilities, although the Council indicate that the proposed development does not trigger a contribution towards education provision. I return to this matter later.
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Main Issues

5. The main issues are:

- The effect of the proposed development on the character and appearance of the area with particular regard to the designation of the site as Urban Greenspace.
- The effect on the ecological value of the site.
- Whether, on balance, there are other material considerations, such as the supply of housing land and the sustainability of the proposed development that would outweigh any harm caused and any conflict with the development plan.

Reasons

Character and appearance – Urban Greenspace

6. The appeal site comprises an irregular parcel of land located to the east of a recent housing development at River Holme View, from where access is proposed, and to the west of New Mill Road. The proposed access would cross a public footpath, Lancaster Lane, which forms the western boundary of the site. At the time of my site visit, the land was in use for livestock grazing and was occupied by pigs. Other than a small number of isolated semi-mature trees, the majority of the site was devoid of vegetation.
7. The site is identified in the Kirklees Unitary Development Plan (UDP) as Urban Greenspace. It forms the southern part of a triangular shaped wider area of Urban Greenspace that has an isolated dwelling, No 238 New Mill Road, located in the centre of the allocation. The Council indicate that the northern half of the allocation had outline planning permission granted on 14 October 2016 for residential development (Ref 2016/90138). Access to this site would be via Lancaster Lane and also off River Holme View.
8. The indicative plan shows a layout of 14 dwellings, comprising 8 detached dwellings and 3 pairs of semi-detached dwellings. In my view, the scale and density of the proposed development would be reflective of the existing character and urban grain of River Holme View. The proposal would effectively form an extension of the River Holme View estate by infilling a wedge of land between River Holme View and New Mill Road, albeit the proposed development would be set higher up than the existing residential estate which occupies the flatter valley floor.
9. Saved Policy D3 of the UDP indicates, amongst other things, that on sites designated as Urban Greenspace planning permission will not be granted unless the development is necessary for the continuation or enhancement of established uses, would involve alternative open land uses, or would result in a specific community benefit. The proposed development, in not meeting any of these stated exceptions, would be contrary to Saved Policy D3.
10. However, the Council indicate that the site's value as open space was considered in the 'Open Space Study' first published in 2007 and revised in 2010. Although the study did not identify the site as being surplus to requirements, the overall assessment was that its value as open space was low

in not having any scarcity value, having no public access and was deemed to not have any significant visual amenity or strategic landscape value.

11. The appellant has drawn my attention to the Inspectors Report following the public inquiry into the objections to the then emerging UDP and a previous planning appeal decision in 1999 for residential development on the site (T/APP/Z4718/A/298972/P2). In considering the proposed Urban Greenspace allocation of the emerging UDP the Inspector recommended that this allocation be deleted and that instead the site be allocated for residential development. However, the Council resolved not to accept this recommendation.
12. In allowing the appeal in 1999, my colleague Inspector considered the value that the site made to the character and appearance of the area. The Inspector identified that the site was of unexceptional appearance and had very little impact on its surroundings, making very little visual or recreational contribution. The concluding opinion was that residential development on the site would not lead to such a reduction in the amount of open land in this part of Brockholes to the extent that it would materially harm its overall appearance or character nor would it cause any harmful visual intrusion into the more undeveloped areas of the valley.
13. In my view, there has been no material change in circumstances to suggest that the site makes any more visual or amenity contribution to the locality beyond that which was identified by my colleague Inspector. The Council indicate that residential development can be accommodated on the site without materially harming the character and appearance of the surrounding area and also that dwellings of an appropriate scale which respect the topography of the site can be accommodated. I concur with the Council's view.
14. Taking the above factors into account, it is clear that the location and appearance of the site makes little functional contribution to its allocation as Urban Greenspace. Although the proposed development would be contrary to Saved Policy D3, I do not consider that it would cause any material harm to the character and appearance of the area of an extent to warrant the dismissal of this appeal on those grounds.

Ecological Value

15. The Council accepts that the submitted ecological reports demonstrate that the ecological value of the site as it currently exists is negligible. I recognise that the site may have made a significant ecological contribution to the broader wildlife habitat network in the past but its current use by livestock has significantly degraded its former value. From my observations at my site visit the field is predominantly comprised of mud and devoid of vegetation and in such condition I agree that its ecological value appears to be negligible.
16. The Council suggest that part of the site has the potential to recover and function as part of an ecological corridor if livestock were no longer kept on the land. Whilst this may be the case, I have no evidence to suggest that the appellant has any intention to remove livestock from the site for the foreseeable future nor is there any planning mechanism to require this.
17. Consequently, whilst I recognise that the ecological value of many undeveloped sites can change if different land management regimes are applied, in this case there is no demonstrable evidence to suggest that there is any likelihood that

the current use of the site by livestock will cease. As such, on the basis of the evidence before me there appears to be very little prospect of the site making a significant contribution to the ecological value of the locality. I have also taken into account the effect of the proposed development on existing habitats and the conclusion of ecological reports indicating that the development would have a non-significant effect on these.

18. The Council has not referred to any development plan policies that may be relevant to the consideration of the longer term ecological potential of proposed development sites or any conflict with any policies relating to existing habitats. Taking the above factors into account, I have therefore attached minimal weight to the Council's view of the ecological potential of the site in the event that livestock were to be removed.

Other material considerations

19. The Council accept that it cannot demonstrate a five year housing supply. Consequently, the policies relevant to the supply of housing contained in the UDP are out of date. The National Planning Policy Framework (the Framework) states that housing proposals should be considered in the context of the presumption in favour of sustainable development. Where relevant policies, as in this case, are out of date paragraph 14 of the Framework applies. It states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
20. The weight to be attached to Saved Policy D3 is necessarily reduced by the advice contained within the Framework insofar as the policy is effectively a constraint relevant to the supply of housing and is out of date by virtue of paragraph 49, given the recognition that a five year supply of housing land cannot be achieved. Consequently, a blanket restriction on housing development on land designated as Urban Greenspace cannot be consistent with the Framework's intentions.
21. Notwithstanding the location of the site in Urban Greenspace, it is located within the defined settlement boundary of Brookholes. The Council indicate that it is located within 350m of the village centre which contains a variety of local services, has a bus stop adjacent to the site and is within convenient walking distance of the train station. Consequently, I agree with the Council that the site is within a sustainable location. Moreover, I have no evidence to suggest it would demonstrably fail to meet the economic, social and environmental role of the dimensions of sustainable development as required by the Framework. In my view, the proposal would constitute a sustainable development.
22. In terms of the benefits, the proposal would contribute towards the supply of housing on a sustainable site located within the settlement boundary. It would also be a sustainable development. Collectively, these considerations are of very significant weight in favour of allowing the appeal.
23. I have attached considerable weight to the fact the Council has recently granted planning permission for residential development on the northern half of Urban Greenspace allocation. In considering the acceptability of development on that site the Council recognised its limited amenity value that the site displays in contributing to its allocation as Urban Greenspace. I see little

material difference in the planning considerations that were relevant to the Council finding that development on the northern part of the allocation to be acceptable and those relating to the appeal site on the southern part.

24. My overall conclusion in this case, having considered all other matters raised, is that the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged by virtue of policies in the UDP relevant to the supply of housing being out of date. In this case the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. This is a material consideration that in my judgement outweighs the conflict with the development plan that I have identified under my first main issue. Having regard to S38(6) of the Planning and Compulsory Purchase Act 2004, I believe that in this case the appeal should not be determined in accordance with the development plan. The appeal should therefore succeed.

Section 106 Unilateral Undertaking and Conditions

25. Policies H10 and H11 of the UDP and Supplementary Planning Document 2 – Affordable Housing (2008) (SPD) require that 30% of the total floor space of the proposed development should comprise affordable housing. As the site is in excess of 0.4 hectares the Council suggests that Policy H18 of the UDP is applicable and a contribution to off-site provision or improvement of Public Open Space (POS) would be required.
26. The submitted Unilateral Undertaking (UU) would provide for the provision of affordable housing in accordance with the above policies and requirements identified in the SPD and provide and make. It would also make provision for, a provide future maintenance of, POS to serve the proposed development. The Council indicate that the submitted UU would deal with policy requirements in relation to affordable housing and POS.
27. For any weight to be given to the UU the provisions need to be in accordance with the tests set out in paragraph 204 of the National Planning Policy Framework (the Framework). Given the provisions of Policies H10, H11 and H18 of the UDP, the UU would enable the requirements of those policies to be met. Consequently, I find that the UU in relation to affordable housing and POS would meet the tests in the Framework.
28. The UU also provides for a contribution towards education facilities. However, the Council indicate that the proposed development does not trigger a contribution towards education provision. Consequently, Obligation 2(ii) of the UU is unnecessary and I have attached no weight to it in reaching my decision.
29. The Council has suggested a number of planning conditions which I have considered against the advice given in paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the government's Planning Practice Guidance.
30. In addition to the standard conditions for outline applications, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in so far as they relate to the means of access. This is in the interests of certainty.
31. Given the sloping nature of the site, I agree that a condition is necessary requiring the provision of ground and floor levels in the interests of protecting

the character and appearance of the area. Also a condition is necessary to control surface water discharge from the site and avoid the risk of flooding elsewhere. In the interests of protecting the integrity of existing sewers and water mains I agree that a condition is necessary to prevent development encroaching within 3m of the centre line of these facilities.

32. Although the submitted plans show the position of the access I agree that a more detailed scheme which details the construction works proposed including structural calculations and details of any retaining structures is required in the interests of highway safety. For the same reason, adequate provision is also required within the curtilage of the proposed dwellings for the surfacing of vehicular parking and access areas.
33. The Council has suggested a number of conditions relating to the investigation and remediation of any potential contamination. I have no evidence to suggest that the site may have been subject to previous contaminative uses and equally no evidence of any investigations to confirm or otherwise that potential land contamination has been assessed. In the circumstances I consider that the Council's suggested conditions are necessary. Moreover, as these only require remediation to be undertaken following a risk assessment I consider that the suggested conditions, albeit detailed, are reasonable.
34. In the interests of promoting sustainable development I agree that a condition requiring that the dwellings are provided with electric vehicle charging points is reasonable and necessary. In order to ensure that adequate provision is made for waste management I agree that a condition is necessary requiring details of bin storage and collection.
35. In the interests of the character and appearance of the area and also in the interests of enhancing the ecological potential of the proposed undeveloped parts of the site, including the provision of opportunities for bat roosting, I agree that conditions are necessary requiring that the development and landscaping is undertaken in accordance with the recommendations provided in the submitted reports by Keystone Ecology. However, I have merged the Council's two suggested conditions on this matter into one.

Conclusion

36. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

1. Plans and particulars of the reserved matters relating to the appearance, landscaping, layout and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.
2. 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.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: Drg No 3 – Layout and Sections; FRA Plan; Location Plan.
5. Details of 'scale' submitted pursuant to condition 1 shall include details of: the existing site levels; the finished floor levels of each dwelling together with corresponding finished ground levels.
6. Development shall not commence until actual or potential land contamination at the site has been investigated and a Preliminary Risk Assessment (Phase I Desk Study Report) has been submitted to and approved in writing by the Local Planning Authority.
7. Where further intrusive investigation is recommended in the Preliminary Risk Assessment approved pursuant to condition 6 development shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.
8. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 7, development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.
9. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 8. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
10. Following completion of any measures identified in the approved Remediation Strategy, or any approved revised Remediation Strategy, a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy, or the

approved revised Remediation Strategy, and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

11. Development shall not commence until a scheme restricting the rate of surface water discharge from the site to a maximum of 5 litres per second has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be designed to attenuate flows generated by the critical 1 in 30 year storm event as a minimum requirement. Flows between the critical 1 in 30 or critical 1 in 100 year storm events shall be stored on site in areas to be approved in writing by the Local Planning Authority, unless it can be demonstrated to the satisfaction of the Local Planning Authority that discharge from site does not cause an increased risk in flooding elsewhere. The scheme shall include a detailed maintenance and management regime for the storage facility including the flow restriction. There shall be no piped discharge of surface water from the development and no part of the development shall be brought into use until the flow restriction and attenuation works comprising the approved scheme have been completed. The approved maintenance and management scheme shall be implemented thereafter.
12. No building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of the sewers and water main, which cross the site boundary.
13. An electric vehicle recharging point shall be installed within the dedicated parking area/garage of each of the approved dwellings before the dwelling to which the recharging point relates is first occupied. Cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32 Amps. The electric vehicle charging points so installed shall thereafter be retained.
14. No development shall take place until a scheme detailing the proposed internal adoptable estate roads including works to the public footpath and measures to restrict vehicle access to New Mill Road via Lancaster Lane have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines, together with an independent safety audit covering all aspects of work. Before any building is brought into use the scheme shall be completed in accordance with the scheme so approved and retained as such thereafter.
15. No development shall take place until the design and construction details of all temporary and permanent highway retaining structures within the site have been approved in writing by, the Local Planning Authority. The details shall include a design statement, all necessary ground investigations on which design assumptions are based on, method statements for both temporary and permanent works and removal of any bulk excavations, a full slope stability analysis together with structural calculations and all associated safety measures for the protection of adjacent public highway, footpath and retaining wall. All highway retaining structures shall be designed and constructed in accordance with the approved details and shall be so retained thereafter.
16. All external vehicle parking areas approved pursuant to condition 1 ('layout') shall be surfaced and drained in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing

of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or superseded. The parking spaces shall be provided as such before the dwellings to which they relate are first occupied and thereafter retained.

17. Details of the 'layout' of the site submitted pursuant to condition 2 shall include details of the storage and access for collection of wastes from the site. The details so approved shall be provided before first occupation and shall be so retained thereafter.
18. Notwithstanding the requirements of condition 2 pertaining to the 'landscaping' of the site, any landscaping proposals within the south western corner of the site (as shown on the indicative site plan) shall include details of a scheme to demonstrate that soil conditions will allow new planting to become established in this area.
19. Notwithstanding the requirements of condition 2 pertaining to the 'landscaping' of the site, all new shrub, tree and hedgerow planting within the site shall comprise native species of plants. The planting schedule shall be informed by the recommendations of the approved Ecological Appraisal prepared by Keystone Ecology and dated September 2015.
20. Details of a scheme for the provision of bird and bat boxes to be incorporated into the development shall be submitted to and approved in writing by the Local Planning Authority before any of the dwellings are first occupied. The approved bat and bird boxes shall be provided before any of the dwellings to which they relate are first occupied and shall be retained thereafter. Bat box provision shall be informed by the recommendations of the approved Bat Roost Inspection Survey Report prepared by Keystone Ecology and dated March 2016.
21. A scheme detailing the proposed external lighting for individual properties shall be submitted to and approved in writing by the Local Planning Authority before the development is first brought into use. The lighting scheme shall be based on the recommendations of the approved Bat Roost Inspection Survey Report prepared by Keystone Ecology and dated March 2016. The lighting scheme so approved shall be provided before the dwelling to which the lighting relates is first occupied and shall thereafter be retained as such.
22. The construction, layout and landscaping of the development shall be carried out in accordance with the recommendations of the following approved reports prepared by Keystone Ecology:
 - (i) Protected species report dated September 2015.
 - (ii) Ecological Appraisal dated September 2015.
 - (iii) Bat Roost Inspection Survey Report dated March 2016.