The Planning Inspectorate

Appeal Decision

Inquiry held on 13-16 December 2016

Accompanied site visit made on 14 December 2016

by M C J Nunn BA BPL LLB LLM BCL MRTPI

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

Decision date: 15 February 2017

Ref: APP/Z4718/W/16/3147937
Land off New Lane, Cleckheaton, BD19 6LG

- 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 Strata Homes Ltd, Peter Brown, Susan Brown, Bridget Knight and Nigel Pearson against the decision of Kirklees Council.
- The application Ref: 2014/62/93073/E, dated 26 September 2014, was refused by notice dated 12 October 2015.
- The development was originally described as "full planning application for erection of 51 residential properties on Land at New Lane, Cleckheaton with associated highways and landscaping".

Decision

1. The appeal is allowed and planning permission granted for the erection of 39 dwellings with associated highways and landscaping at Land off New Lane, Cleckheaton, BD19 6LG, in accordance with the terms of the application, Ref: 2014/62/93073/E, dated 26 September 2014, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. As originally submitted, the planning application was for 51 dwellings, as recorded in the header above. However, during the determination process the scheme was reduced to 39 houses. The Council considered the proposal on this revised basis and I have done the same.

3. In addition to my accompanied site visit, I made a number of unaccompanied visits to the site and its surroundings.

4. Amended plans have been put forward by the appellant for consideration, to replace certain of those originally determined by the Council. These comprise an amended Site Layout Plan (0200-0201 Rev Q)[1], Street Scenes (0200-0252 Rev A), Sections (0200-251 Rev A), and Moorside Build-Out (873 01 Rev F). These revisions followed, amongst other things, a further review of site levels and the position of existing protected trees on the site. The overall layout of the scheme is very similar to that originally proposed, and on which the Council

[1] The Council determined the application on the basis of Site Layout Plan 0200-0201 Rev P

based its decision, although the detailed orientation and placement of certain houses has altered. Publicity was undertaken by the appellant, which included letters to those originally notified of the application, a newspaper advert, and notices displayed at the site. The Council confirmed it had no objection to the appeal being determined on the basis of the revised plans.

5. I am satisfied that those with an interest in the proposal have had sufficient opportunity to comment on the revised layout, which does not alter the substance of this scheme. At the Inquiry I ruled that, having regard to the *Wheatcroft Principles,* no-one would be prejudiced by my assessing the appeal on the basis of the revised plans. I have proceeded on this basis.

6. On the final day of the Inquiry, I agreed that one of the objectors to the scheme, Mr Raisbeck, could put in written submissions in respect of highway matters. I postponed closing the Inquiry until both the appellant and Council had had the opportunity to respond in writing to his comments. The Inquiry was closed in writing on 21 December 2016. I have taken all the comments received into consideration in my deliberations.

7. A planning obligation, dated 15 December 2016, was submitted during the Inquiry. I deal with this in the body of my decision.

Main Issues

8. The main issues are:

   i. the effect of the proposal on the character and appearance of the area;

   ii. the effect on the safe and efficient operation of the highway;

   iii. whether the proposal would represent a sustainable form of development; and

   iv. in the absence of a five year supply of deliverable housing sites, whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme.

Reasons

Planning Policy Context

9. The relevant legislation[2] requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the 'saved' policies of the Kirklees Unitary Development Plan, adopted in 1999 ('the UDP'). The Council's decision notice refers solely to Policy D3 of the UDP, concerned with Urban Greenspace (UGS). Nevertheless, other relevant policies of the UDP include BE1, BE2, BE12 (broadly concerned with design principles), T10 (highway safety), T19 (parking), NE9 (trees), H1 (housing needs), H10 (affordable housing), and H18 (provision of open space).

10. Policy D3 sets out the Council's approach to land designated as UGS. It states that permission will not be granted unless the proposed development is

[2] Section 38(6) of the Planning and Compulsory Purchase Act 2004

(i) necessary for the continuation or enhancement of established uses or involves a change of use to alternative open land uses, or would result in a specific community benefit, and in all cases, will protect visual amenity, wildlife value and opportunities for sport and recreation, or (ii) includes alternative provision of UGS equivalent in both quantitative and qualitative terms to that which would be developed and be reasonably accessible to existing users.

11. The National Planning Policy Framework ('the Framework') sets out the Government's planning policies and is a material consideration in planning decisions. The Framework does not change the statutory status of the development plan for decision making. Importantly, however, the Framework advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

12. Within the adopted UDP, the appeal site is designated as part of a larger area of UGS, where Policy D3 applies. In this respect, a residential scheme, as proposed here, clearly would not accord with Policy D3 of the UDP. However, it is not disputed by the Council that it is unable to demonstrate a deliverable five year supply of housing, as required by the Framework. At the Inquiry, the current five year supply was calculated to be 2.66 years by the Council, and 2.27 years by the appellant[3]. The Council acknowledges that, based on either figure, the shortfall is significant. Indeed, the Council accepts that the housing delivery problem is 'acute and chronic'[4]. In such circumstances, Paragraph 49 of the Framework is engaged and the relevant policies for housing supply should not be considered up-to-date.

13. The UDP, as the appellant notes, is also formally 'time expired', its end date being April 2006. The Council states that Policy D3 should not be given reduced weight merely on account of its age. It suggests that the policy is largely consistent with the Framework: it is not a 'blanket restriction' and is directed at urban land of identifiable value. Whilst I accept that may be so, given that Policy D3 of the UDP seeks to preclude development on UGS except in specific and limited circumstances, and given its reasonably extensive geographic coverage, its effect is inevitably to constrain the supply of housing. Thus, to the extent the Policy affects the supply of housing, it cannot be considered up-to-date. To the extent the Policy seeks to protect UGS, it continues to carry some weight in the overall planning balance, but the amount of weight is a matter of planning judgement in the circumstances of the case, which I deal with later.

14. Paragraph 49 also records that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 of the Framework is clear that where the development plan is absent, silent or out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

15. The Council's decision notice also refers to Paragraph 74 of the Framework. This states that existing open space, sports and recreational buildings and land,

[3] Statement of Common Ground, Paragraphs 6.5 & 6.6
[4] Closing Submissions of Council, Paragraph 23

including playing fields, should not be built on unless: an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or the development is for alternative sports and recreation provision, the needs for which clearly outweigh the loss.

16. There was much discussion at the Inquiry as to the relevance of Paragraph 74 to this appeal, including whether Policy D3 is consistent with it. The appellant seeks to argue that Paragraph 74 is not directly relevant on the basis it only applies to land which provides for active recreational use, and has some element of public access, which the appeal site does not. The Council, based on an interpretation of the definition of open space within the Framework's Glossary, argues that Paragraph 74 applies to sites which can act as a visual amenity, and that offering important opportunities for sport and recreation is not necessarily a pre-requisite[5].

17. In support of its contention, the Council highlights that in Paragraph 74 'open space' is identified separately from 'sports and recreational buildings and land'. My attention was also drawn to the Planning Practice Guidance[6] which records the various forms that open space can take, including amongst other things, formal sports pitches, contributing to green infrastructure, as well as being an important part of the landscape and setting of built development. In addition, the Council also draws support for its argument in the now cancelled Planning Policy Guidance 17: *Planning for Open Space, Sport and Recreation* (PPG17). The Annex of PPG17 states that 'even without public access, people can enjoy having open space near them to provide an outlook, variety in urban scene, or as a positive element in the landscape'.

18. The Council further contends that the effect of Paragraph 74 means that the 'weighted balance' in favour of approving development proposals in Paragraph 14 does not apply. This is because Paragraph 74 is a specific policy that indicates development should be restricted, and Footnote 9 to Paragraph 14 gives examples of such policies which cut across the underlying presumption in favour of development. Although Paragraph 74 is not specifically listed, it is the Council's contention that recent case law supports Footnote 9 being given a wide meaning[7]. I acknowledge the list is not exhaustive, and that Paragraph 74 could potentially be regarded as a policy where the Framework indicates permission should be restricted.

19. It seems to me that the definition of open space within the Glossary of the Framework is open to interpretation. However, having regard to the broader definition with the PPG, I accept that the definition of open space may include land protected for its visual amenity, and which does not necessarily have a formal recreational or sporting function, nor is accessible to the public. It is also the case that open space may also have value in the sense it provides variety in urban townscapes, and contributes to the landscape. Such attributes can promote the health and wellbeing of communities.

[5] The definition of Open Space is: All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.
[6] Paragraph: 001 Reference ID: 37-001-20140306
[7] Forest of Dean Council v SSCLG & Gladman Developments Ltd [2016] EWHC 421 (Admin)

20. All that said, whilst accepting open space may comprise land protected for its visual amenity, it is difficult to see how the various tests in Paragraph 74 are especially relevant or germane to land primarily or solely safeguarded for that purpose, as is the case with respect to the appeal site. Indeed, it is hard to see how such land protected mainly for visual amenity or landscape value could normally be regarded as 'surplus to requirements' in any commonsense or practical view, or that it could be replaced by 'equivalent or better provision in terms of quantity or quality in a suitable location', in the way that, for example, a playing field, formal recreational ground, play area or park could[8].

21. Indeed, the danger is that the strict application of such tests framed in this way would preclude development on large swathes of land protected mainly for their visual amenity within the Plan Area. It would severely restrict opportunities for new development because it would require that land primarily protected for its visual qualities would have to be re-provided elsewhere in alternative suitable locations, or found to be 'surplus' to requirements. I am not convinced this is a realistic or appropriate approach given the severe housing land supply shortage in Kirklees.

22. Nor am I persuaded that it was the Framework's intention to sterilise such land from development, especially given the requirement to boost significantly the supply of housing[9] and to ensure that the planning system does not act as an impediment to sustainable growth[10]. In my view, Paragraph 74's purpose is not primarily concerned with landscape protection, especially given that other provisions of the Framework deal with such matters. Hence, I am not convinced that the strict application of the tests in Paragraph 74 is particularly appropriate or relevant in this case. It follows too, therefore, that I do not consider the weighted presumption of Paragraph 14 should be displaced.

23. All that said, even if a contrary view is taken that the tests in Paragraph 74 are directly relevant with respect to the appeal site, the appellant has demonstrated that there is no current existing shortage of natural and semi-natural greenspace within the Cleckheaton Ward[11]. The Kirklees standard for such land is 2ha per 1000 of the population[12]. Presently, within Cleckheaton Ward, the amount of natural and semi-natural greenspace is 2.86ha per 1000 population. In the event the appeal site were to be developed, this would reduce to 2.76ha per 1000. This is still in excess of the 2ha standard. Thus, development of the appeal site would not result in a quantitative deficiency. Accordingly, in quantitative terms, the site could be said to be 'surplus to requirements' with reference to Paragraph 74. I deal with the qualitative merits of the site below.

24. An earlier Core Strategy was submitted for examination in 2012 but ran into difficulties and was withdrawn. A new local plan is currently being prepared for Kirklees. The Publication Draft Local Plan: Strategy & Policies ('the Emerging Plan') was published in November 2016 for consultation. The appeal site continues to be identified as UGS within that Plan, as part of the larger

[8] See observations of Lindblom LJ in *R (on the application of Anne-Marie Loader) v Rother District Council & Churchill Retirement Living* [2016] EWCA Civ 795
[9] Paragraph 47
[10] Paragraph 19
[11] Proof of Evidence, Paul Bedwell, Paragraphs 6.113-6.119
[12] Open Space Study 2015 (Revised 2016)

allocation, and is protected by Policy PLP 61. However, the Emerging Plan is still at an early stage. Examination and adoption is highly unlikely before 2018 at the earliest. The Plan is subject to various outstanding objections, and its policies may be subject to significant change. In these circumstances, and in accordance with Paragraph 216 of the Framework, very little weight can be given to the Emerging Plan.

Character and Appearance

25. The appeal site comprises an irregular shaped area of open land that slopes gently away from New Lane. The westernmost part fronts directly on to New Lane, and is enclosed by a hedgerow. The western boundary of the site is indented by various residential properties fronting New Lane, including the more modern cul-de-sac of houses of Rustless Close. To the north, the site extends to Moorside (A643) and Pearson Street (a cul-de-sac). The eastern boundary abuts further open fields, and to the south are the predominantly open curtilages of buildings along Halifax Road. A number of trees within the site are protected by a Tree Preservation Order (TPO)[13] including a group immediately to the east of Rustless Close. The site forms part of much larger area of UGS extending eastwards.

26. The site was assessed some years ago as part of the Inspector's Report into objections to the UDP in 1995-6, where it was noted that this part of the UGS had a more enclosed feel than much of the area, because of the narrowing of the open tract at the west end between housing on Moorside and Halifax Road, and the more intensive tree cover. It was also recorded that the site was less prominent from the built up area of the Cleckheaton than the north facing slopes further east. Nonetheless, the Inspector concluded that the site created an open break along New Lane, was appreciated from the public footpath to the east, and that the trees, some protected by a TPO, provided a feature of amenity value, and that the designation of UGS was justified.

27. The UDP Inspector's opinion that the UGS designation was warranted was made well over 20 years ago, and should be treated with some caution. The character and appearance of areas inevitably change over time, with new developments occurring. For example, the comments predate the construction of the dwellings in Rustless Close. Moreover, the Inspector's Report was also written in a markedly different planning policy context, before the publication of the Framework, and at a time when housing needs where not so pressing.

28. As part of this appeal, the Council has assessed the landscape value of the site to be 'moderate' [14] whereas the appellant describes it as 'medium / low'[15]. From my own observations, in terms of scenic quality, the appeal site landscape can be regarded as reasonably attractive, to the extent it comprises open land, but it is certainly nothing out of the ordinary. Apart from the protected trees, the appeal site contains few landscape features of intrinsic value. Indeed, much of the area comprises overgrown brambles and grassland, with some evidence of fly tipping, and it is generally in a declining condition. The site itself has no public access, no public rights of way and does

[13] Tree Preservation Order No 17 (2014)
[14] Proof of Evidence, Christina Lee, Paragraph 5.3
[15] Proof of Evidence, Pauline Randall, Paragraph 4.36

not perform a formal recreational function. In terms of tranquillity, it is affected by the M62 to the north west.

29. In my judgement, the appeal site is relatively well contained, notwithstanding its designation as UGS. Although the site is currently undeveloped, its character is significantly affected by the urban development on its edges – in particular the housing development along New Lane and Rustless Close, as well as the properties to the north along Moorside, Pearson Street and Thornton Street. It possesses a slightly urban fringe character. Whilst the easternmost boundary abuts open landscape, the site is largely perceived in the context of the surrounding urban development. Importantly, I do not regard the site to be an essential or intrinsic component of the wider open countryside or area of UGS. In fact, it only comprises a relatively small element of this UGS allocation. Nor do I consider that its development would mean the much larger area of UGS would be compromised or become unviable.

30. There are limited public views into the site, and when viewed from New Lane, the most obvious public vantage point, it is seen in the context of the built environs of the locality. Within the wider landscape, my inspections from the footpath to the east SPE/92/10 indicate that the appeal site is seen at a distance and within the context of a larger panorama which includes much urban development. As one walks along the footpath, views of the site are heavily filtered by the intervening vegetation and, in places, impeded by a roll in the hillside. Whilst the development would be seen as expanding the urban edge of housing, the visual intrusion of built development when viewed from the footpath would be limited because of the benefit of distance, intervening vegetation and width of view.

31. A concern raised by objectors to the scheme is the effect on the character of New Lane. I acknowledge, notwithstanding the existing residential development, that New Lane retains a semi-rural appearance because of the length of hedgerow and the UGS beyond. This open break is clearly locally valued by those living in the road, and affords pleasant views from the properties in the vicinity across the UGS. The proposed access into the site from New Lane and new housing would result in the loss of this open break and would create a substantially more suburban appearance. However, given the existing context of residential housing, I see the location as less sensitive to new development, as compared with the circumstances further eastwards where the UGS opens up into a much wider expanse of land.

32. I am satisfied that the proposed dwellings would be of a high quality design and of an appropriate scale, and that the proposed palette of materials of the buildings would reflect those of the existing locality. In my judgement, there is no reason to suppose that new residential development would not be adequately assimilated with the other existing houses along the road. Concerns have been raised about the loss of views from existing dwellings. However, the slope in the land, together with the heights of the proposed dwellings, and the intervening distances between buildings are such as to avoid unacceptable dominance, overshadowing or loss of privacy.

33. Drawing all these matter together, in terms of character and appearance, I consider that the appeal scheme would have a relatively localised impact on the character of the area, the most marked effect being on the character of

New Lane where the open break and hedgerow would be lost. I consider that the new development would have a modest effect on the wider landscape and larger UGS allocation because of the site's relatively self-contained nature, its limited size and the existing development around its edge. In these circumstances, I find the proposal would comply with Policies BE1, BE2 and BE12 of the UDP which together, amongst other things, require development to be of good quality design that retains a sense of local identity, to be in keeping with surrounding development, incorporate existing landscape features, including trees as an integral part of the proposal, and require that privacy and open space be provided in new dwellings.

Effect on safe and efficient operation of the highway

34. The scheme would comprise two separate cul-de-sacs, one accessed from New Lane and the other from a widened Pearson Street. Each would be linked together via a footpath. At application stage, following discussions and various design amendments, no technical objections on highway grounds were raised by officers of the Council, subject to conditions. The Council's stated position at the Inquiry was that access arrangements accord with the current guidance and that the proposal would not present a highway safety or capacity problem[16]. However, there are nonetheless issues that have raised considerable concerns with objectors to the scheme.

35. The appellant estimates vehicular flows would comprise up to some 22 vehicular trips in the morning peak hour, and some 24 vehicular trips in the evening peak. It is estimated that the development would generate a daily traffic flow of around 206 vehicle movements[17]. Given that none of the existing roads are currently close to their theoretical capacities, I see no reason to doubt that additional traffic would be easily accommodated without materially affecting the capacity of the road network.

36. Local residents are also concerned about the loss of on-street parking, but the scheme would only result in the loss of two on-street parking spaces on Moorside as a consequence of 'Keep Clear' markings either side of the junction with Pearson Street. No other restrictions are proposed such as, for example, the introduction of 'yellow lines', or the construction of 'kerb build-outs'. Six new parking spaces would be provided for residents of Moorside and Pearson Street within the scheme in mitigation. Concerns are also raised that the scheme would lead to an increase in parking along Moorside, affecting visibility and access to properties along that road. However, based on the evidence of the appellant, I consider it is unlikely that the development would displace parked vehicles on to this part of the road. Residents have also raised concerns about the narrow width of Pearson Street, but the appeal scheme proposes widening this road to a standard width of 5.5 metres, addressing any concerns in that regard.

37. I have carefully considered the concerns of the local residents in relation to highway matters, but find no compelling evidence to indicate that there would be an unacceptable risk for drivers or that the additional traffic could not be

[16] Statement of Common Ground, Paragraph 8.6
[17] Highways Proof of Evidence, Eric Appleton, Pages 13-14

satisfactorily accommodated. If this had been the case, I would have expected the Council, as the responsible highway authority, to have raised objections.

38. To sum up on this issue, it would not be reasonable to withhold permission for this scheme on the basis of concerns in relation to highway effects. There is no doubt that the scheme would result in some additional traffic compared with the current situation but there is no evidence that it would prejudice the safe and efficient operation of the highway. Paragraph 32 of the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe. This would not be the case here. I am also satisfied the scheme would comply with Policies T10 and T19 of the UDP, concerning highway safety and parking respectively.

Sustainability

39. Turning to sustainability, the Framework identifies different dimensions to sustainable development, comprising economic, social, and environmental. These dimensions give rise to the need for the planning system to perform a number of roles. The additional housing would be a weighty benefit for the area, by introducing much needed private and affordable housing for local people – 30 new market homes and 9 affordable homes. It would boost the supply of housing in accordance with the Framework. It would create additional housing choice and competition in the housing market. It would create investment in the locality and increase spending in local shops. It would create jobs and investment during the construction phase, albeit for a temporary period. The new homes bonus would bring additional resources to the Council[18].

40. I also consider that the site is in a reasonably sustainable location, not far from the various shops, services, health & education facilities, and employment opportunities of Cleckheaton. There are a number of bus services available nearby. The scheme includes financial contributions, secured by a planning obligation, to enable investment education, as well improvements to bus stops and the provision of MetroCards to residents in order to encourage public transport use. In these respects, I am satisfied that the scheme would comply with the economic and social dimensions of sustainability.

41. In terms of the environmental dimension, a contention is that the development is unsustainable because it would lead to the loss of an area of UGS, in conflict with Policy D3 of the UDP. However, a significant element of the urban area within Kirklees falls within this category. Given the acknowledged need for housing, it is likely that some land designated as UGS will be required for development. Whilst the development would result in the loss of an area of UGS as well as section of hedgerow, the Site Layout Plan shows opportunities for landscaping. The scheme also proposes the provision of an area of public open space, which incorporates a group of protected trees. Taken as a whole, and in the light of my findings in relation to character and appearance, I am satisfied that the scheme meets the social, economic and environmental dimensions of sustainability as set out in Paragraph 7 of the Framework, and these factors can be weighed in the final decision making balance.

[18] This could total around £280,000 over 6 years

Other Matters

42. The appellant has completed a planning obligation dated 15 December 2016. The obligation secures the provision of affordable housing at a rate of 23%. Based on 39 dwellings, this equates to 9 affordable units. It also secures the provision of on-site public open space, requiring a scheme for its future maintenance and management to be approved. It secures financial contributions towards educational facilities at Whitechapel Primary School to accommodate pupil growth from the development (£96,372)[19], bus stop improvements (£10,000) and MetroCards for occupants of the development (£18,000) to promote the use of public transport.

43. I have no reason to believe that the formulae and charges used by the Council to calculate the various contributions are other than soundly based. The Council has produced a detailed Compliance Statement which demonstrates how the obligations meet various Council policies and the Community Infrastructure Levy Regulations[20]. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework[21] and the Community Infrastructure Levy Regulations[22].

44. The Council has raised concerns in respect of the revised plans, specifically regarding the impact on certain trees. It is said that the 90 degree rotation of the houses at Plots 35-37 would create a domestic aspect towards the protected trees. The concerns are that the canopies of the trees would be closer to the rear windows of the properties, thereby reducing outlook and light, and that that the usability of the garden spaces of the dwellings would also be impaired, because of light loss, overshadowing, and debris drop. This would, the Council says, lead to pressures to prune or even remove the trees.

45. I note, however, that in the revised layout the distance of the houses from the trees would be increased by around 2 metres[23], and because of the eastern orientation of the gardens, any overshadowing or loss of sunlight would be confined to the early morning period. Moreover, because the trees are protected, any decision to prune or fell the trees is at the discretion of the Council. It therefore has control over their future management and I am not convinced the appeal should fail on this ground.

46. In terms of ecology, no part of the site is covered by wildlife designations. An Ecological Summary Statement[24] concludes that the site comprises habitats of low ecological value, and that the retention of the site's woodland area within the scheme would provide opportunities for enhancement. Appraisals and a number of surveys have been undertaken to determine the habitats present within the site. No evidence of bat roosting has been found, although the site

[19] In accordance with the Council's document entitled: 'Providing for Education needs generated from New Development'
[20] Statement of Compliance with CIL Regulations, dated 16 December 2016
[21] Paragraph 204
[22] Regulation 122
[23] Note on Trees, Jonathan Cocking, Inquiry Document 12
[24] Proof of Evidence, Pauline Randall, Annex 1

has been found to support foraging. I am satisfied that appropriate mitigation measures could be undertaken to ensure there is no negative effect on nature conservation interests. There is also the opportunity for ecological enhancement and habitat creation through management of the woodland within the site. These measures could be secured by condition.

47. A Flood Risk Assessment has been prepared which confirms that the site falls entirely within Flood Zone 1 where there is a low probability of flooding. I am satisfied that drainage matters can be appropriately dealt with by a condition.

Overall Conclusions and Planning Balance

48. The Framework states at Paragraph 14 and 49 that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by the economic, social, and environmental dimensions and the interrelated roles they perform. In this case, the contribution of the site to the market and affordable housing requirements of the district is of substantial importance. The scheme would also generate economic and social benefits. It is reasonably close to the facilities and services of Cleckheaton and there are bus services nearby. Whilst the development would result in the loss of an area of UGS as well as a section of hedgerow, the Site Layout Plan shows opportunities for landscaping, the retention of trees and the incorporation of public open space. The site is physically well contained and visually well related to the existing built-up area.

49. The scheme would conflict with Policy D3 of the UDP. Policy D3's effect is to constrain the supply of housing and in this respect cannot be considered up-to-date. Nonetheless, it continues to carry weight in the overall planning balance to the extent the Policy seeks to protect UGS. However, the significance of the conflict is mitigated in that, although designated as UGS, the site is enclosed from public access, is overgrown in parts with some small scale fly-tipping taking place, and is in a declining condition. I accept that the site does offer a welcome open break within New Lane and the surrounding built up area, but that benefit is geographically limited principally to those properties in the vicinity.

50. With regards to the relevance of Paragraph 74 of the Framework, I have expressed some doubts as to whether tests framed in terms of open space being 'surplus to requirements' or replaced by 'equivalent or better provision in terms of quantity or quality in a suitable location' are especially relevant or germane to land primarily safeguarded for visual amenity, as here. However, even if a contrary view is taken, the appellant has demonstrated that there is no current existing shortage of natural and semi-natural greenspace within the Cleckheaton Ward. Therefore, development of the appeal site would not result in a quantitative deficiency, and, accordingly, in quantitative terms, the site could be said to be 'surplus to requirements'. Furthermore, I am satisfied that in qualitative terms, the site's characteristics are not of such a high order that development should not take place.

51. Taken as a whole, and in the light of my findings in relation to character and appearance, as well as highway matters, I consider that the site meets the social, economic and environmental dimensions of sustainability as set out in Paragraph 7 of the Framework, and this weighs heavily in favour of the

scheme. Moreover, I am satisfied that the scheme considered as a whole would provide material benefits compliant with other aspects of the UDP and the Framework. Specifically, it would comply with UDP Policies including BE1, BE2, BE12 concerned with general design principles, Policy T10 concerned with highway safety, Policy T19 relating to parking, and Policy NE9 requiring mature trees to be retained. It would also comply with Policy H1 which requires that the housing needs of the district be met, including the provision of affordable homes, Policy H10 which requires an element affordable housing in new developments, and Policy H18 which requires the provision of open space in housing developments. Overall, I consider the scheme is a sustainable form of development, for which Paragraph 14 makes clear there is a presumption in favour.

52. Importantly, the Council cannot demonstrate a five year supply of housing. This factor attracts substantial weight in favour of granting permission for the proposals, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. I am satisfied that none of the reasons put forward for opposing the development establishes that the harm would be significant or would demonstrably outweigh the benefits. It follows that the appeal should succeed, subject to conditions. I deal with conditions below.

53. In reaching my decision, I have carefully considered the serious concerns voiced by local residents. I note the fears that granting planning permission would create a precedent for other housing proposals on land designated as UGS. However, any future proposals would have to be considered on their merits bearing in mind all material factors. In this case, I have judged the balance falls in favour of granting permission because the adverse impacts would not significantly and demonstrably outweigh the benefits. That judgement is specific to this proposal and would not necessarily be the same if applied to other cases.

Conditions

54. I have reviewed the suggested conditions in the light of the discussion at the Inquiry and advice in the PPG. Where necessary, I have reworded them for clarity and simplicity, and have also amalgamated some of the conditions to avoid duplication.

55. A commencement condition is necessary to comply with the relevant legislation. A condition requiring compliance with the submitted plans is necessary for certainty. Conditions relating to: materials, boundary treatments, finished site levels, landscaping implementation & management, tree protection (including removing permitted development rights at certain plots where protected trees are in close proximity to dwellings), and biodiversity habitat enhancement are all necessary to ensure these matters are properly dealt with and to ensure a high quality scheme.

56. A condition relating to noise attenuation in the dwellings nearest to Moorside is necessary to ensure satisfactory living conditions for future occupiers. Conditions relating to drainage and land contamination are required to ensure these matters are appropriately addressed. A condition requiring electric vehicle charging points is necessary to encourage sustainable transport.

Conditions requiring the provision of further details in respect of the two access roads from Moorside / Pearson Street and New Lane respectively are necessary in the interests of highway safety and to ensure a satisfactory form of development. These details relate to parking, visibility splays, footways, surfacing & drainage, lighting, and refuse / recycling storage and collection points. A number of the conditions relate to pre-commencement activities. In each of these cases, the requirement of the condition is fundamental to make the scheme acceptable in planning terms.

57. For the reasons above, and subject to the conditions in the schedule, the appeal is allowed.

Matthew C J Nunn

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:

   i. Location Plan: 0200-0100
   ii. Proposed Site Layout Plan: 0200-0201 Rev Q
   iii. Access Arrangement: Pearson Street / Moorside 873 01 Rev F
   iv. Turning Head Swept Path: 873 02
   v. Turning Head Swept Path: 873 03
   vi. Visibility Spays: 873 04
   vii. Proposed Sections: 0200-0251 Rev A
   viii. Proposed Streetscenes: 0200-0252 Rev A
   ix. Landscape Masterplan: 0200-0700 Rev H
   x. Landscape Detail: 0200-0701 Rev G
   xi. Landscape Detail: 0200-0702 Rev F
   xii. Landscape Detail: 0200-0703 Rev D
   xiii. Barcelona / Madrid: Floor Plans (14)
   xiv. Barcelona / Madrid: Elevations (13)
   xv. Milan (Moorside Rd): Elevations & Floor Plans (12)
   xvi. Milan: Elevations & Floor Plans (12)
   xvii. Naples: Elevations & Floor Plans (12)
   xviii. Naples (New Lane): Elevations & Floor Plans (12)
   xix. Pareti (Brick): Elevations & Floor Plans (11)
   xx. Pareti (Stone): Elevations & Floor Plans (12)
   xxi. Siena: Elevations & Floor Plans (10)
   xxii. Siena (New Lane): Elevations & Floor Plans (10)
   xxiii. Valencia: Elevations & Floor Plans (11)
   xxiv. Valencia (New Lane): Elevations & Floor Plans (11)
   xxv. Vienna: Floor Plans (11)
   xxvi. Vienna: Elevations (10)

3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatments to be erected. The boundary treatments shall be completed before the dwellings are first occupied in accordance with the approved details.

5) The landscaping works shall be carried out in accordance with the approved plans before the dwellings are first occupied, or in accordance with a programme agreed by the local planning authority; and any trees or plants which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.

6) Before the development is first occupied a landscape maintenance & management plan, including long term objectives, management responsibilities and maintenance schedules for all landscaped areas, shall be submitted to and approved in writing by the local planning authority. The landscape maintenance & management plan shall be carried out as approved.

7) No site clearance, preparatory work or development shall take place until an arboricultural method statement (in accordance with British Standard BS 5837) for the protection of trees & hedgerows including appropriate working methods has been submitted to and approved in writing by the local planning authority. The method statement for the protection of retained trees & hedgerows shall be carried out as approved. In this condition retained trees & hedgerows means those to be retained in accordance with the approved plans.

8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking that Order with or without modification), no alterations or other works permitted by Classes A, B or E of Part 1 Schedule 2 of the Order shall be made to the dwellings within Plots 34, 35, 36 & 37.

9) No development shall begin until a biodiversity habitat enhancement scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include details of measures for encouraging biodiversity within the site, including potential locations for bird & bat roosting opportunities. The scheme shall be carried out as approved before the dwellings are first occupied, or in accordance with a programme agreed by the local planning authority. The measures indentified within the scheme shall be permanently retained thereafter.

10) No development shall begin until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority (in addition to any assessment provided with the planning application). This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175, and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: (i) a survey of the extent, scale and nature of contamination; (ii) the potential risks to human health, property (existing or proposed)

including buildings, crops, livestock, pets, woodland, service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, and archaeological sites and ancient monuments.

No development shall take place where (following the risk assessment) land affected by the contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out (and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority) before the development (or relevant phase of the development) is occupied.

Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.

11) Construction work shall not begin on the dwellings at Plots 38 & 39 until a scheme for protecting them from road traffic noise from the A643 (Moorside) has been submitted to and approved in writing by the local planning authority. The scheme shall determine the noise climate and include details of the attenuation / design measures necessary to protect the living conditions of future occupiers. All works that form part of the approved scheme shall be completed before these dwellings are first occupied and shall be permanently retained thereafter.

12) Before the development is first occupied details of a scheme for electrical vehicle charging points shall be submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved before the dwellings are first occupied, or in accordance with a programme agreed by the local planning authority. The approved scheme shall be permanently retained thereafter.

13) The dwellings shall not be occupied until surface and foul water drainage works have been implemented in accordance with details that have been previously submitted to and approved in writing by the local planning authority. The works shall be permanently retained thereafter.

14) No development shall take place until full details of the finished levels, above ordnance datum, or the ground floors of the proposed dwellings, in

relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved levels.

15) Development served from Moorside / Pearson Road shall not take place until details of the following items have been submitted to and approved in writing by the local planning authority; and this part of the development shall not be occupied until those items have been constructed or implemented in accordance with the approved details, and they shall be permanently retained thereafter:

    i. A scheme of measures to manage on-street parking at the junction of Pearson Street & Moorside;

    ii. Full details of visibility splays, including a tracking analysis to accommodate a refuse vehicle of a type specified by the local planning authority;

    iii. Details of construction, surfacing, drainage and lighting relating to the Pearson Street & Moorside junction and the internal highway layout accessed from that junction;

    iv. Details of waste refuse / recycling storage and collection points for the dwellings;

    v. A scheme for the management of parking spaces Nos 1-6 for use by residents of Pearson Street & Moorside;

    vi. Details of surfacing and drainage for the areas of private parking associated with the dwellings;

16) Development served from New Lane shall not take place until details of the following items have been submitted to and approved in writing by the local planning authority; and this part of the development shall not be occupied until those items have been constructed or implemented in accordance with the approved details, and permanently retailed thereafter:

    i. Full details of visibility splays, including a tracking analysis to accommodate a refuse vehicle of a type specified by the local planning authority;

    ii. Details of construction, surfacing, drainage and lighting relating to the New Lane junction and the internal highway layout accessed from that junction;

    iii. Details of the footway along the site frontage with New Lane;

    iv. Details of waste refuse / recycling storage and collection points for the dwellings;

    v. Details of surfacing and drainage for the areas of private parking associated with the dwellings;

APPEARANCES

FOR THE COUNCIL:

Mr Alan Evans of Counsel	Instructed by Kirklees Council

He called

Ms Christina Lee	Landscape & Visual Matters, Kirklees Council
Mr Steven Wright	Planning Matters, Kirklees Council

FOR THE APPELLANT:

Mr Andrew Williamson &	
Mr Josh Kitson	Instructed by the appellants

They called

Mr Eric Appleton	Highway Matters, Paragon Highways
Ms Pauline Randall	Landscape & Visual Matters, Randall Thorp
Mr Paul Bedwell	Planning Matters, Spawforths

INTERESTED PERSONS

Councillor Andrew Pinnock	Ward Member, Kirklees Council
Mr Colin Berry	Spen Valley Civic Society
Mr Max Rathmell	Spen Valley Civic Society
Graham Raisbeck	Local resident
Jacqueline Murray	Local resident
Peter Jones	Local resident
Stuart Johnson	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Gladman Developments Ltd v Daventry District Council & SSCLG [2016] EWCA Civ 1146
2. Suffolk Coastal District Council v Hopkins Homes Ltd & SSCLG; Richborough Estates LLP v Cheshire East Council & SSCLG [2016] EWCA Civ 168
3. Forest of Dean District Council v SSLG & Gladman Developments Ltd [2016] EWHC 421 (Admin)
4. R (on the application of Anne-Marie Loader) v Rother District Council & Churchill Retirement Living Ltd [2015] EWHC 1877 (Admin)
5. R (on the application of Anne-Marie Loader) v Rother District Council & Churchill Retirement Living [2016] EWCA Civ 795
6. Planning Practice Guidance: Open Space, Sports and Recreation Facilities
7. Additional Photograph - Proof of Evidence of Christina Lee
8. Kirklees District Landscape Character Assessment – Final Report, July 2015
9. Housing Sites within 1 mile of appeal site, produced by Spen Valley Civic Society
10. Appeal decision APP/A0665/A/2200583, dated 23 January 2014
11. Appeal decision APP/E5330/W/3129768, dated 26 May 2016
12. Note regarding effect of proposal on protected trees, by Jonathan Cocking
13. Appeal decision APP/Z4718/13/2201353, dated 18 December 2013
14. Comments of Mr Graham Raisbeck
15. Statement of Mr Colin Berry, Spen Valley Civic Society
16. Development view analysis from footpath SPE/92/10, Randall Thorp
17. Bundle of documents relating to highway matters, put in by Mr Raisbeck
18. List of draft conditions
19. Certified copy of Legal agreement, dated 15 December 2016
20. Statement of Compliance with Community Infrastructure Levy Regulations, dated 16 December 2016
21. Submission of Mr Graham Raisbeck, dated 16 December 2016
22. Opening Remarks & Closing Submissions on behalf of Kirklees Council
23. Opening and Closing Submissions on behalf of the appellants
24. Appellant's statement in response to Mr Raisbeck's Submission
25. Council's response to Mr Raisbeck's Submission