

Appeal Decision

Site visit made on 6 January 2017

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 15 June 2017

Appeal Ref: APP/X1355/W/16/3160472

Land to the south of and including No. 7 The Paddock, Lanchester, Durham, County Durham, DH7 0HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Duncan McGregor on behalf of Beavertail Ltd. against the decision of Durham County Council.
 - The application Ref DM/16/00871/OUT, dated 15 March 2016, was refused by notice dated 30 June 2016.
 - The development proposed is for outline planning permission for residential development (C3)(all matters reserved except access) including the demolition of No. 7 The Paddock.
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Procedural Matters

1. The proposals have been submitted in outline with all matters except access reserved for later consideration. I have dealt with the appeal on this basis and treated the submitted layout plan as indicative in respect of the reserved matters (appearance, landscaping, layout and scale) related to the proposed residential development.
2. During the course of the appeal, the appellant has submitted a planning obligation dated 23 February 2017. The obligation addresses matters related to the provision of a contribution per dwelling towards the provision of public open space on the appeal site, or the provision and/or enhancement of public open space within the locality of the site. I will return to this document later on within this Decision.

Decision

3. The appeal is allowed and outline planning permission is granted for residential development (C3) (all matters reserved except access) including the demolition of No. 7 The Paddock on Land to the south of and including No. 7 The Paddock, Lanchester, Durham, County Durham, DH7 0HW, in accordance with the terms of the application Ref DM/16/00871/OUT, dated 15 March 2016, and subject to the conditions as set out within the annex.

Main Issue

4. The main issue is whether the proposal would have an adverse effect on the character and appearance of the area, having regard to its location within the countryside, and an adverse impact on protected trees.
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Reasons

5. The appeal site occupies approximately 1 hectare of sloping semi-improved grassland towards the south-west corner of Lanchester, which is a large village and identified as a *local service centre* in the Development Plan, sitting mid-way between Durham and Consett. The land is bounded to the west and south by fencing, hedging and trees, with open land and countryside beyond. The north and east boundaries are shared with the residential curtilages of existing housing development. The existing access to the appeal site is taken from between dwellings on Ford Road. The appeal site is designated as being located within an Area of High Landscape Value (AHLV), and many of the trees located within the curtilage of No. 7 The Paddock, which is to be demolished, are protected by Tree Preservation Order (TPO).
6. The appeal site is clearly set beyond, albeit adjacent to, the existing physical extent of development on the edge of Lanchester. As a consequence of its generally rural character, I would agree that the land appears to occupy a location within the open countryside. In this respect, I have also had regard to the assessment of the Council's Landscape Officer that the site is reflective of the traditional field pattern highlighted on maps back to 1860. Furthermore, I noted on site the existing mature evergreen screening of residential development at The Paddock in longer views from the south approaching Lanchester.
7. I would not dispute that the proposed development would result in a permanent and adverse change to the character and appearance of the appeal site itself. In this respect, I recognise that the development of the land would, to some extent, run counter to the National Planning Policy Framework's (the Framework) core planning principle (paragraph 17) of recognising the intrinsic character and beauty of the countryside. I have also been mindful of the Council's reference within the Appeal Statement to saved Policy EN6 of the Derwentside District Council Saved Local Plan and Structure Plan Policies 2007 (the Local Plan) and paragraph 109 of the Framework in respect of the AHLV, which set out the need to protect and enhance valued landscapes. However, although the land is pleasant, on the basis of the limited evidence from the Council and my observations of the site, there are no overall specific characteristics of the appeal site which have been drawn to my attention which would warrant its full protection over and above any other area of countryside.
8. I note that the appellant has provided an indicative mitigation strategy in respect of the landscaping of the appeal site as a means of maintaining the semi-rural character of the approach to Lanchester from the south. Whilst acknowledging that landscaping is a reserved matter, I accept that the incorporation of a strategic landscaping buffer within the appeal site along the field boundaries would be a reasonable approach in seeking to mitigate the visual impact of the proposals. Whilst I have had regard to the Council's concerns over the potential impact that the imposition of a substantial belt of strategic planting would have on the living conditions of future occupiers as shown on the indicative plans, I am mindful that layout and scale of development are also reserved matters. On the basis of the submissions, I am not persuaded that the site would be incapable of development at a quantum as shown indicatively, on the basis of the Council's concerns over living conditions.

9. As a consequence, I consider that the development of the appeal site would, with appropriate detailing of planting and visual mitigation, be acceptable in the context of the wider overall character of the rural landscape. I accept that the development would amount to a change to the existing disposition of land use and an intrusion into the countryside immediately to the south of Lanchester, but not that the resultant effect would be the loss of the semi-rural character of the southern approach or an overall adverse effect on the AHLV.
10. Turning to the impact on protected trees, it is reported that the appellant has worked with the Council during the course of the planning application to address concerns over the alignment of the access road and the potential impact on the root systems of TPO trees. The proposed development would result in the loss of some of the existing TPO trees, as identified within the appellant's arboricultural submissions. However, whilst there would be limited visual harm as a result of the removal of some of the protected trees, I am satisfied that any loss would be limited in its scope compared to the overall visual contribution of the remaining mature tree belt. Furthermore, and in light of the establishment of the tree belt over a significant period of time adjacent to existing buildings and development, I see no reason why retained trees could not be protected during both construction works and upon completion of the development in a manner which would safeguard their continued vitality. I am satisfied that these are matters which could be adequately addressed by the imposition of planning conditions.
11. The proposed development would undoubtedly result in an adverse impact on the character and appearance of the appeal site itself, albeit that I am satisfied that it would be possible to incorporate a layout and design of development which would not result in an overall unacceptable impact on the wider landscape character of the area. There would also be some limited visual harm as a consequence of the removal of protected trees in the vicinity in order to facilitate the access to the site. In this respect, I consider that the proposals would result in some limited conflict with saved Policies EN1 and EN2 of the Local Plan due to the development of the appeal site within the countryside and outside the existing built up area of Lanchester, but would not result in any significant harm to the wider character of the landscape. Furthermore, I have also found there to be some conflict with saved Policy EN11 of the Local Plan, which seeks to ensure that development does not result in the loss of trees protected by TPOs, albeit that I have had regard to the indicative proposal for replacement planting. Additionally, I am satisfied that the conclusions reached in respect of the above saved policies are consistent with the approach advocated by the requisite paragraphs of Part 11 of the Framework.

Other Possible Harm

12. Interested parties have raised a significant number of other concerns with regards the proposed development, in the course of both the assessment of the planning application and the appeal.
13. Recent development, as well as the impact of the proposal, has been cited as a concern in respect of the impact on Lanchester and its infrastructure and facilities. However, whilst I am mindful that the proposed development would inevitably place greater demands on the facilities and services within Lanchester, I have not been provided with any conclusive evidence that existing schools, doctors' surgeries or retail would be adversely affected by the

- proposed development, or that there would be insufficient capacity to be able to accommodate the increased demand. I am also mindful that the Council has not required the appellant to mitigate any impacts of the development in these respects, other than with regards the provision of sufficient open space.
14. I have had regard to concerns expressed regarding the accessibility of the appeal site to services and facilities. However, I am satisfied that the existing connections via The Paddock allow good access to the centre of Lanchester, with the various services and facilities all within reasonable walking distance. I note that public transport options are available in the form of bus services to surrounding larger settlements including Durham and Consett. These conclusions are consistent with the classification of Lanchester as a Local Service Centre with reasonable access to services and facilities.
15. I note that many concerns have focussed on highway safety and impacts as a consequence of the proposed development, and in particular on The Paddock. In this respect, I have had regard to the matters raised for the periods both during construction and upon occupation, including congestion, danger to pedestrians and the impact of existing on-street parking. I note that these matters have been considered by the Council as the Highway Authority with the conclusion reached that the existing carriageway and footways are adequate to support the additional residential development, with the highway network in The Paddock considered to be suitable. Having noted the general absence of on-street parking at the time of my visit, and in the absence of any detailed technical evidence to the contrary, I see no reason to disagree with the Highway Authority's conclusions with regards the highway impacts of the proposed development, which I consider to be acceptable.
16. Turning to matters related to drainage and flooding, whilst I have had regard to the testimony of local residents in respect of recent flood events in the wider area, I have not been provided with any compelling evidence why issues or matters related to the drainage of the appeal site could not be appropriately addressed and mitigated, as set out in the submitted Flood Risk Assessment and Surface Water Management Plan. I note the absence of an objection on the grounds of flood risk from the Council acting as the Flood Authority, and I am satisfied that matters related to drainage can be adequately secured by planning condition.
17. With regards to biodiversity and archaeology, there is no evidence of adverse impacts or harm arising which could not be sufficiently addressed through the imposition of suitable planning conditions to secure mitigation and/or investigation. Furthermore, in respect of archaeology, I note that the appeal site is indicated to be located 340 metres from *Longovicium* Roman Fort, a Scheduled Ancient Monument (SAM), and 82 metres beyond its protected setting. Nevertheless, and being mindful of the existing residential nature of surrounding development, I am satisfied that there would not be an adverse impact on the setting of the SAM from the residential development of the appeal site.
18. In respect of matters related to detailed design, scale and layout, I am mindful that these would all be appropriately addressed as part of any future reserved matters application rather than at this stage. Similarly, with regards to impacts on living conditions, whilst acknowledging that these would be assessed at the reserved matter stage, there is no reason to believe that the site could not be

developed for residential use without causing loss of privacy or other harm to the amenity of neighbouring residents, or unacceptable disturbance during construction. I have had regard to the concerns over the loss of views across the existing appeal site, but whilst I accept that the outlook would alter for neighbouring residents, I do not consider that this would be unacceptable in planning terms.

19. I have noted the concerns with regards to self-build. However, whilst I have had regard to the appellant's reference to it within their submissions, the proposed development has not been explicitly described on this basis, and no mechanism has been proposed or suggested to secure the development for this form of development. There is also no substantive evidence to indicate that the proposed development would have an adverse effect on property values, and matters related to private covenants would not be a material planning consideration.
20. I have noted that representations have been made to the effect that Mr Satchwell's (the occupier of No. 8 The Paddock, Lanchester) rights under Articles 1 & 8 of the European Convention on Human Rights would be violated if the appeal were allowed. However, I do not consider them to be well-founded because with the proposed development made in outline at this stage, as I have indicated above, there is no evidence that there would be the alleged impact on privacy and private life highlighted as an impingement to the right to a private family life under Article 8. As expressed above, I am satisfied that an acceptable relationship between the proposed development and No. 8 The Paddock, Lanchester would be attainable and as a result, there would be no violation of Mr Satchwell's human rights.

Planning Benefits

21. Both the Council and the appellant accept that the Council is unable to demonstrate a 5 year supply of deliverable housing land. The Council has identified the level of supply against a range of scenarios as being assessed as between 4 and 5 years, whilst the appellant has provided an assessment of between 4.04 and 4.65 years supply, dependent on whether a higher or lower Objectively Assessed Need (OAN) is relied upon. In this respect, there is no dispute that the proposals should therefore be assessed against the presumption in favour of sustainable development set out at paragraph 14 of the Framework, which states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of development. However, in accepting that the Council's 5 year housing land supply falls within this range, I would agree with the Council's assessment that any shortfall is unlikely to be significant, which is consistent with the cited approach taken on a recent dismissed appeal decision for 149 dwellings on another site within Lanchester.
22. In respect of the impact on the saved Policies of the Local Plan, I am satisfied that Policies EN1 and EN2 are policies which relate to the supply of housing. As a consequence of the failure to be able to demonstrate a 5 year supply of deliverable housing land, and being mindful of the indicated extent of the shortfall, I am satisfied that these policies must carry a reduced level of weight. However, I have had regard to the fact that both policies appear to be of dual purpose in also seeking to protect the surrounding countryside and landscape.

Therefore, in this respect, I consider that Policies EN1 and EN2 carry only relatively limited weight.

23. The proposed development would result in the contribution of up to 14 dwellings towards the delivery of housing in Durham and the long-term housing requirement. Whilst I accept that the quantum of development would make only a comparatively small contribution towards meeting the shortfall, I conclude that moderate weight in support of the proposals must nevertheless be afforded to this provision. Further to the additions to the local housing market, the proposed development would also provide some limited economic benefit as a result of the opportunities for the creation of employment from the construction of the dwellings as well as within the supply chain and related services, as well as economically in respect of spending in the local area and the generation of New Homes Bonus payments.

Obligations and conditions

24. As set out at the beginning of this Decision, the appellant has submitted a planning obligation in support of the proposed development. I am satisfied that the undertaking is in order and meets all the requirements set by the Council. Furthermore, the Council has set out the need for the provision of, or contribution towards public open space, as well as specifically identifying the direct relationship to the development, the necessity and acceptability in planning terms, and that the obligation is fairly and reasonably related in scale. In this respect, I am satisfied that the obligation would accord with the provisions of Regulation 122 of the Community Infrastructure Levy regulations 2010 and the tests for planning obligations set out in the Framework.
25. Turning to the suggested conditions, I have considered these in the light of paragraph 206 of the Framework. The submission of details of existing site levels would be in the interests of the character and appearance of the area, residential amenity, tree protection and highway safety, whilst the implementation of detailed schemes for surface water and foul water drainage, would be in the interests of preventing the increased risk of flooding and ensuring the proper drainage of the proposed development.
26. Whilst acknowledging the outline nature of the proposals, the requirement for a landscape and ecological management plan is considered necessary in the interests of the character and appearance of the area and biodiversity interests of the site, whilst the protection of existing trees on and adjacent to the appeal site would be necessary in the interest of the character and appearance of the area. Conditions related to details of highway construction and road cleansing would be in the interests of highway safety.
27. A condition to ensure embedded carbon minimisation measures would be in the interest of the sustainability of the proposed development. Conditions related to archaeological investigation and recording would be necessary to ensure the significance of any archaeological interests on the site are understood, whilst a condition controlling hours of working would be in the interests of safeguarding the living conditions of nearby residential occupiers.

Planning Balance and Conclusion

28. I have concluded that the appeal site is situated within an accessible and sustainable location for new development, and would make a positive social

contribution to the local housing market through the provision of additional housing, to which I attach moderate weight. The proposed development would also have some limited economic benefits related to the construction and future occupation.

29. However, I have concluded that there would be an adverse impact on the appeal site itself, but that the proposed development would not result in an overall unacceptable impact on the wider landscape character of the area. There would also be some limited visual harm as a consequence of the removal of protected trees in the vicinity in order to facilitate the access to the site.
30. In respect of other possible harm identified by interested parties in relation to the proposed development, I conclude that none would be likely to result from the scheme, and I am satisfied that the significance of the nearby heritage asset would not be diminished.
31. Nevertheless, being mindful of paragraph 14 of the Framework, I am satisfied that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the development. As a consequence, the scheme does represent sustainable development. For the reasons given above, and subject to the conditions attached, the appeal should be allowed.

M Seaton

INSPECTOR

Annex

Conditions

- 1) Details of the appearance, landscaping, layout and scale of the residential development, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 2) The residential development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters, or in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby approved shall be carried out in accordance with the following approved plans: Location Plan & Drawing No. NEA1350.
- 4) Before any part of the development hereby approved is commenced, an existing site levels survey for the whole site and a proposed highways levels plan for all communal vehicular and pedestrian highways, and shared drives must be submitted to and approved in writing by the Local planning authority. Before each individual plot commences development an existing levels plan, a proposed ground levels plan to cover the whole plot and show all formed slopes and retaining structures, existing and proposed boundary markers, and elevations showing finished floor, eaves and ridge levels must be submitted to and approved in writing by the local planning authority, with the development carried out in full accordance with said approval.
- 5) A detailed scheme for surface water drainage in accordance with that set out in the submitted Flood Risk Assessment for the whole site must be submitted to, and be approved in writing by the Local planning authority before development commences, being thereafter adhered to and implemented in full. This must ensure the green-field run off rate is to be restricted to 3.5l/s/ha to reduce the risk of flooding downstream. Watercourse consent must also be obtained prior to any works on the proposed outfall into Alderdene Burn.
- 6) For foul drainage, the development hereby approved shall be implemented in line with the drainage scheme contained within the submitted document entitled "Segment 002 of The Paddock Lanchester-FRA Drainage Strategy- Planning". The drainage scheme shall ensure that foul flows discharge to the combined sewer at manhole 5901, and ensure that surface water discharges to the existing watercourse.
- 7) A Landscape and ecological management plan must be submitted and agreed in writing by the Local planning authority prior to the commencement of development to ensure the long-term maintenance of the South and West structure planting as well as the amenity land either side of the access road on the site of the former bungalow (no.7 The Paddock) and to meet the needs of protected species in the area. Communal landscaping must be maintained by a management company specified in that document. The agreed landscaping and communal

ecological mitigation must be implemented prior to the commencement of development of any individual plot hereby approved, with mitigation proposed incorporated into the fabric of any individual building completed before that building is occupied as a dwelling. Protective fencing must be maintained to the specification set out in BS 5837:2012 in the position shown on submitted Plan TPP (All About Trees 11/03/2016) on each plot and the site entrance during the full term of its development.

- 8) In order to protect existing trees on and adjacent the site boundaries protective fencing must be maintained to the specification set out in BS 5837:2012 in the position shown on submitted Plan TPP (All About Trees 11/03/2016) on each plot during the full term of its development and at the site entrance during the full term of its development (excluding wearing course). There must be no works or storage of materials, plant or vehicles within the tree protection area during construction works.
- 9) Before development of any individual plot full constructional details of the proposed road, to be of a standard capable of adoption, including levels, kerbs, drainage, footways, footway crossings and shared drives shall be submitted to and approved in writing by the Local planning authority. A schedule for construction of the road and triggers for implementation must be included in said document. The works must be carried out in full accordance with the written agreement.
- 10) Before development is commenced a management scheme of road cleaning must be submitted to and approved in writing by the Local planning authority, being thereafter adhered to at all times.
- 11) To address requirements for embedded sustainability, prior to the commencement of the development a scheme to embed sustainability and minimise Carbon from construction and in-use emissions shall be submitted to and approved in writing by the Local Planning Authority before development of each individual plot. Thereafter the development shall be carried out in complete accordance with the approved scheme and retained while the building is in existence.
- 12) To address archaeological implications on the site, No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation that has been approved in writing by the Local Planning Authority. The Scheme shall provide for :
 - i. Measures to ensure the preservation in situ, or the preservation by record, of archaeological features of identified importance.
 - ii. Methodologies for the recording and recovery of archaeological remains including artefacts and ecofacts.
 - iii. Post-fieldwork methodologies for assessment and analyses.
 - iv. Report content and arrangements for dissemination, and publication proposals.
 - v. Archive preparation and deposition with recognised repositories.
 - vi. A timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy.

vii. Monitoring arrangements, including the notification in writing to the Principal Archaeologist of the commencement of archaeological works and the opportunity to monitor such works.

viii. A list of all staff involved in the implementation of the strategy, including subcontractors and specialists, their responsibilities and qualifications.

The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings.

- 13) To ensure any identified archaeological interests identifies are properly recorded, a copy of any analysis, reporting, publication or archiving required as part of the mitigation strategy shall be deposited at the County Durham Historic Environment Record within six months of the date of completion of the development hereby approved by this permission.
- 14) No construction operations, including the use of plant, equipment and deliveries, which are likely to give disturbance to local residents should take place before 0800hrs and continue after 1800hrs Monday to Friday, or commence before 0800hrs and continue after 1300hrs on Saturday. No works should be carried out on a Sunday or a Bank Holiday.