
Appeal Decision

Inquiry held on 6-9 and 14 June 2017

Site visit made on 9 June 2017

by Mike Hayden BSc DipTP MRTPI

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

Decision date: 28 July 2017

Appeal Ref: APP/X1355/W/16/3163598

Land at the former Sedgefield Community Hospital, Salters Lane, Sedgefield, County Durham

- 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 Stella Property Investments Ltd against the decision of Durham County Council.
 - The application Ref DM/16/01522/OUT, dated 10 May 2016, was refused by notice dated 6 September 2016.
 - The development proposed is outline application for the erection of up to 125 dwellings, associated landscaping and parking, in conjunction with demolition of existing buildings.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 100 dwellings, associated landscaping and parking, in conjunction with the demolition of existing buildings on land at the former Sedgefield Community Hospital, Salters Lane, Sedgefield, County Durham in accordance with the terms of the application, Ref DM/16/01522/OUT, dated 10 May 2016, subject to the conditions set out in the schedule at the end of this decision and the S106 agreement and undertaking referred to below.

Procedural Matters

2. The application was submitted in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. Access was the only detailed matter fixed for determination as part of the appeal. I have dealt with the appeal on this basis.
3. The planning application was for up to 125 dwellings, supported by an indicative masterplan, which amongst other things illustrated the layout and landscaping of the proposed development to be dealt with at reserved matters stage. A revised illustrative masterplan was submitted by the appellant during the appeal process, showing a reduction in the number of dwellings to 100 units. In particular, the amended layout seeks to address concerns about the loss of trees and landscaping raised during the determination of the application. It shows how the appeal site could be developed whilst retaining more of the existing trees and hedgerows and incorporating additional structure planting along the site boundaries.
4. The appellant asked that the revised illustrative masterplan be taken into account in determining the appeal and stated their willingness to accept a condition restricting the number of dwellings to 100 if I were minded to allow

the appeal. It will be clear from my decision above that I have taken the revised masterplan into account. One of the reasons for refusal of the application was the effect of the proposed development on the character and appearance of the countryside. Therefore, a plan, albeit indicative, showing how this could be mitigated by reducing the quantum and built footprint of the development is material.

5. I have considered, in the light of parties' submissions and the Wheatcroft Principles, whether this is reasonable. Although reducing the scheme from a maximum of 125 to 100 units might on the face of it be argued to be a material change to the quantum of the proposed scheme, the application was in fact for 'up to' 125 dwellings. There is nothing in law which prevents a condition being imposed which would limit the permitted development to something less than the maximum if justified. The Wheatcroft judgement (*Bernard Wheatcroft Ltd v SSE (1982) 43 P. & C.R. 233*) establishes the principle that to do so would be unreasonable if it deprived those who should have been consulted on the changed development of the opportunity of such consultation. However, in this case the appellant submitted the revised illustrative masterplan to the Council approximately 7 weeks in advance of the inquiry and notified other interested parties at the same time. Therefore, the Council had reasonable time to address the revised masterplan and the implications of a reduced scheme as part of its evidence to the inquiry. I am also satisfied that other interested parties have been given a fair opportunity to comment on the revised plan and inform my consideration of it both before and during the inquiry process. On this basis, I have taken the revised illustrative masterplan into account in determining this appeal.
6. A completed legal agreement and a separate unilateral undertaking under S106 of the 1990 Act were submitted by the appellant. The agreement comprises planning obligations to provide 10% of the proposed dwellings as affordable housing and public open space on site, and financial contributions towards secondary school places and the improvement of open space off-site within Fishburn and Sedgfield. The undertaking includes an obligation on the appellant to pay the cost of an off-site street lighting scheme along Salters Lane between the appeal site and Fishburn to the north and the North East Technology Park (NETPark) to the south. The deeds are certified and signed by the land owner and, in the case of the agreement, by the local planning authority. I am satisfied that both deeds, for the reasons I explain below in relation to their respective provisions, meet the necessary legal and policy tests set out in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Therefore, I have taken them into account in reaching my decision.

Development Plan

7. The statutory development plan for this appeal comprises the 'saved' policies of the Sedgfield Borough Local Plan (1996) (SBLP). Whilst these were intended to cover the period to 2006, a new local plan has yet to be adopted. In such circumstances, paragraph 215 of the National Planning Policy Framework (the Framework) provides that due weight should be given to policies in existing plans according to their degree of consistency with the Framework.
8. Paragraph 216 of the Framework also allows weight to be given to relevant policies in emerging plans. A new County Durham Plan (CDP) is being prepared. However, it has been paused following consultation on Issues and

Options pending the publication of a standard methodology for objectively assessed housing need (OAHN) in the light of the proposals in the Housing White Paper – Fixing our Broken Housing Market (2017). Therefore, it is common ground between the main parties that no weight can be accorded to the emerging CDP for the purposes of this appeal.

9. A Neighbourhood Plan (NP) for Sedgefield is also being brought forward by Sedgefield Town Council. A revised version of the NP has been submitted to the Council following examination. However, further public consultation and examination are likely before the NP could be made. Accordingly, given the stage of preparation, the potential for unresolved objections and the fact that the consistency of the revised NP with the Framework is still to be tested, following the approach set out in paragraph 216 of the Framework, I have afforded very little weight to the policies of the NP for the purposes of this appeal.

Main Issues

10. It is agreed between the main parties that the local planning authority is unable to demonstrate a 5 year supply of deliverable housing sites in County Durham. Accordingly, paragraph 49 of the Framework states that the relevant policies for the supply of housing should not be considered up to date. In these circumstances, the fourth bullet point of paragraph 14 of the Framework makes clear that the presumption in favour of sustainable development means granting permission for the proposed development, unless any adverse impacts significantly and demonstrably outweigh its benefits or specific policies in the Framework indicate development should be restricted.
11. In view of this, and having regard to everything else I have read, heard and seen, the main issues in this appeal are whether any specific policies in the Framework indicate that the proposed development should be restricted or whether any adverse impacts of the proposal would significantly and demonstrably outweigh its benefits, having particular regard to:
 - The suitability of the site as a location for housing, taking account of relevant local and national planning policy, the relationship of the site to Sedgefield and Fishburn and its accessibility to local services and facilities;
 - The effect of the proposed development on the character and appearance of the surrounding countryside; and
 - The contribution of the proposal to meeting the shortfall in the supply of market and affordable housing.

Reasons

Location and Accessibility

12. The appeal site is located within the countryside between the settlements of Sedgefield and Fishburn. Paragraph 55 of the Framework seeks to promote sustainable development in rural areas, by encouraging housing to be located where it will enhance or maintain rural communities, and avoiding isolated new homes in the countryside. The Council maintains that the proposed development would be isolated; a rural enclave, with poor accessibility to local services and facilities, that would not create the successful communities sought by national and local policy.

13. In terms of its physical proximity to Sedgefield and Fishburn, the appeal site is around 500 metres (m) from the built edge of Sedgefield and approximately 800m from the edge of Fishburn. In this sense alone, the site could not be regarded as isolated, since it is neither remote nor far away from other places, buildings or people, which is the dictionary definition of the term 'isolated'¹. However, consideration of access to local services and facilities for future residents of the site is also necessary to establish whether it would be isolated from the nearby communities.
14. A thorough analysis of the site's accessibility to services and facilities in Sedgefield and Fishburn has been provided in the Highways Statement of Common Ground (HiSoCG). Whilst the principle of whether the site is sufficiently accessible is disputed by the Council as the local planning authority, the distances, routes and journey times by alternative modes of transport set out in the HiSoCG are agreed between the main parties.
15. Although the site is around 2.4 kilometres (km) from Sedgefield town centre, Fishburn local centre is within 1km. Most day to day services and facilities, including local food stores, a post office, doctor's surgery, community centre, open space, a primary school and nursery, the hospital, and employment at NETPark are within 1.6km of the site either in Fishburn or Sedgefield. The exception to this is the secondary school, Sedgefield Community College, but it would be within 10 minutes cycle ride of the site. The Chartered Institution of Highways and Transportation (CIHT) publication 'Providing for Journeys on Foot' (2015) identifies that 80% of journeys under 1.6km are made on foot. Therefore, most local facilities and services would be within reasonable walking distance of the development.
16. Access would be provided via the B1278 Salters Lane, an uncongested road running between Sedgefield and Fishburn. A shared footpath/cycleway along the western side of Salters Lane provides pedestrian and cycle access to Fishburn and Sedgefield. The shared route to Sedgefield runs via an off-road path through NETPark and the Winterton housing estate to the south. Whilst the appeal site is in a valley between the two settlements and therefore the routes into both Fishburn and Sedgefield are slightly uphill from the site entrance, they are easily walkable.
17. The site is also well served by public transport. There are bus stops on either side of the B1278 close to the south-east corner of the site. 3 bus services per hour on Mondays to Saturdays and 1 per hour on a Sunday run in both directions stopping in Fishburn, Sedgefield and settlements further afield. Journey times by bus to Fishburn and Sedgefield centres would take 4 and 6 minutes respectively.
18. The appellant has agreed as part of the proposed scheme to provide a new 3m wide shared footpath/cycleway along the frontage of the appeal site to replace the existing shared route which narrows to 1.6m wide at this point. In addition, the unilateral undertaking submitted by the appellant includes an obligation to fund the reinstatement of lighting along the length of the shared footpath/cycleway between Fishburn and where it meets the NETPark route to the south of the site. Both of these measures would enhance the accessibility of the site for pedestrians and cyclists throughout the year. In turn this would be likely to encourage occupiers of the proposed development to use the most

¹ New Oxford English Dictionary

sustainable modes of travel to access local services. Subject to appropriate conditions and the planning obligations, the proposed development could be designed to ensure satisfactory and safe provision for pedestrians, cyclists and public transport in accordance with saved Policy D3, through the reserved matters.

19. I acknowledge that the site is outside of Sedgefield and Fishburn and therefore to use local facilities would require a journey into either settlement. In this sense it is not in a location where the need to travel will be minimised as sought by paragraph 34 of the Framework. However, this needs to take account of policies for rural areas. Paragraph 55 of the Framework recognises that development in one village may support services in a village nearby, accepting travel between communities is necessary in rural areas. The proposed development would do this, with its future occupiers supporting facilities and services in both Sedgefield and Fishburn. The distances and travel times, the availability of relatively frequent bus services and the good quality footpath and cycle routes existing and proposed should enable the use of sustainable modes of travel to be maximised.
20. Whilst the Inspectors' report on the objections to the SBLP in 1995 came to a different conclusion about the suitability of appeal site as a location for housing in relation to Policy L15, it was written over 20 years ago, since when there has been a material change in circumstances. At that time the northern edge Sedgefield was 1.5km away from the appeal site, to the south of the redundant Winterton hospital buildings. Significant development has taken place since then extending the settlement of Sedgefield around 1km further north. The Winterton estate, NETPark, the new community hospital and a supermarket have all been constructed, providing a residential community, employment, open space, shopping and medical facilities within walking distance of the appeal site. Whilst the appeal site may have been isolated in 1995, its proximity to the community of Sedgefield today and its accessibility to services in both Fishburn and Sedgefield lead me to conclude that the site is no longer isolated within the countryside.
21. Therefore, although Policy L15 of the SBLP remains a 'saved' policy in the development plan, the justification for its restriction on housing on the appeal site due to its isolated rural location in 1996 is no longer valid. There appears little prospect of the uses which are compliant with Policy L15 coming forward on the appeal site. A new community hospital has been built in Sedgefield, planning permission for a residential institution on the appeal site in 1997 was not implemented and there is no evidence of plans or funding for open space or tree planting. In its report on the NETPark Phase 3a application the Council itself concluded that Policy L15 is out of date. Further, to the extent that the policy plays a role in controlling the supply of housing, paragraph 49 of the Framework makes clear that it is out of date, given the absence of a 5 year supply of housing land. Although 'out of date' policies are not rendered irrelevant, for all the above reasons, limited weight can be attached to Policy L15 in determining whether the appeal site is now a suitable location for housing.
22. I have also considered saved Policies H8 and H11 of the SBLP, which although not relied upon by the Council in refusing the application were referred to in evidence. Together Policies H8 and H11 direct housing development to locations within the residential frameworks of Sedgefield and Fishburn and

restrict new housing in the countryside outside of the settlement limits. I recognise that in part this is to protect the character of the countryside, which I deal with separately below. However, to the extent that these are policies relevant to the supply of housing, paragraph 49 of the Framework says that they are out of date. As such, I have afforded them only limited weight in determining whether the appeal site is a suitable location for housing.

23. On this basis, therefore, I conclude that the appeal site would be a suitable location for housing. Although it lies in the countryside between Sedgefield and Fishburn, it is neither isolated nor poorly related to the communities of either settlement. The site would be accessible to local services by a range of sustainable modes of travel and within reasonable walking distance of most day to day facilities in Fishburn and Sedgefield. The proposals to enhance the footpath links and reinstate street lighting would improve the accessibility of the site and the attractiveness of the route between Sedgefield and Fishburn. Accordingly, the proposal would meet the requirements of saved Policy D3 of the SBLP, subject to appropriate conditions and obligations. It would also be consistent with paragraphs 34 and 55 of the Framework taken together, in promoting sustainable development in rural areas, maintaining the vitality of communities and enabling sustainable modes of travel. Whilst it would fail to comply with the acceptable uses identified for the site in Policy L15 of the SBLP and with Policies H8 and H11, I have concluded that these carry limited weight in determining whether the site is a suitable location for housing.

Character and Appearance

24. The appeal site falls within the 'Lowland Plain' Broad Landscape Character Type and within the 'Tees Lowlands' County Character Area (CCA). This is described in the County Durham Landscape Character Assessment (2008) as a predominantly rural landscape of arable and mixed farmlands, with scattered hedgerow and trees and occasional larger settlements. Within this broad character area, the site is defined as lying within the Lizards Farm Local Character Area (LCA) of open, gently rolling farmland bordering on the River Skerne to the north.
25. Although not part of a nationally or locally significant landscape designation, the appearance of the countryside surrounding the appeal site as characterised is attractive. Paragraph 17 of the Framework recognises the intrinsic character and beauty of the countryside. The ministerial letter from Brandon Lewis MP in March 2015 made clear that outside of the designated areas, the impact of development on the landscape can be an important material consideration.
26. Within this context, the appeal site is previously developed land. It contains the hardstandings and building platforms of the demolished, former Sedgefield Community Hospital. One building remains standing, Farm Villa, in the north-west corner of the site. The site is fringed by mature trees and hedgerows, including a line of hybrid black poplars, which contribute to the character and appearance of the site and the surrounding landscape. However, despite its green border, the unmistakable appearance of the site is of the remains of its former use.
27. Both parties submitted landscape and visual impact assessments (LVIAs) for the proposed development. Although the appeal site sits within the Skerne River valley, with higher ground to the north and south, both LVIAs show that its visibility is limited. Distant and mid-range views from the surrounding public

footpaths, buildings and viewpoints to the north, east and west are largely obscured by the undulating topography or by vegetation around the appeal site and along field boundaries.

28. The site is visible from the B1278 Salters Lane, in close up views along its eastern boundary and from the south travelling northwards down the hill from Sedgefield past NETPark. There are also glimpsed or partial views of the site from surrounding dwellings and farms, including Weterton House and Farm to the east, Willowdene Nursing Home to the north and Lizards Farm to the west. At this range and from these locations, the proposed development would be conspicuous and contrast with the current openness of the site and the surrounding rural landscape.
29. However, Policy L15 of the SBLP allows that, notwithstanding its rural landscape setting, its redevelopment for a substantial quantum of buildings would be acceptable, albeit for a community hospital or residential institution. Although I attach limited weight to Policy L15 in determining whether the appeal site is a suitable location for housing, it does have continuing relevance in considering the landscape and visual impacts of any such development on the surrounding countryside. Significantly, the important elements of the landscape that Policy L15 seeks to protect in any development of the appeal site are the landscape setting of the Winterton Hospital site, the open land between the Winterton and Sedgefield hospital sites and any site features of importance. At a more general level Policy E1 of the SBLP in seeking to maintain the Lowlands landscape area, expects landscape features such as hedgerows, woods and buildings to fit into the landscape scheme for any development.
30. The appeal proposal would maintain the open land to the south of the site between it and the Winterton site and would as such have little effect on the landscape setting of the Winterton estate. It would result in the loss of the line of black poplar trees and a horse chestnut along the eastern boundary of the site and a number of ash and sycamore trees in the south west corner of the site. However, the revised illustrative masterplan and the supporting arboricultural assessment show that with a reduction in the footprint of the scheme to 100 dwellings, the majority of the remaining significant trees and hedgerows along the boundaries of the site could be retained. This would be important in mitigating the visual impact of the proposed development along Salters Lane and could be secured by condition to be dealt with as part of any reserved matters.
31. I acknowledge that the type of institutional uses allowed for under Policy L15 would amount to a different form of development to the proposed scheme, possibly with fewer, larger scale buildings, in more of a parkland setting with an enhanced level of landscaping. However, the change from the currently open character of the site which would result would not be significantly less conspicuous than for a 100 unit housing development, nor any more in keeping with the surrounding open rural landscape. Although not setting a precedent for the proposed development, the plans and images of the secure healthcare facility granted planning permission on the appeal site in 2007 illustrate that the potential visual and landscape impacts of a Policy L15 compliant use would be comparable to those of the proposed housing development.
32. With regard to the potential for the proposal to increase coalescence between Sedgefield and Fishburn. I acknowledge the importance of maintaining separation between settlements and note this is one of the reasons that Policy

H11 of the SBLP seeks to limit housing development in the countryside. However, Policy L15 of the SBLP has already ensured that in the particular circumstances of the appeal site, a quantum of development to replace the former community hospital would not close the gap between Sedgefield and Fishburn as long as the open land between the site and Winterton Hospital is maintained. The same would apply to the open land between the site and Fishburn. The proposed development would not reduce these gaps. I have also considered the concern about visual coalescence with Fishburn when viewing the appeal site from the south on the B1278 as one rounds the bend in the road at the top of the hill. Whilst it is true the houses on the southern edge of Fishburn would be seen in the distance above the roofs of the proposed development, the open land separating the development from Fishburn would also be clearly evident. Therefore, the proposed development would neither result in physical or visual coalescence with Fishburn or Sedgefield.

33. On this basis, notwithstanding the attractiveness and open rural character of the surrounding landscape, given the previously developed status and accepted Policy L15 uses of the appeal site and its limited visibility in the wider landscape, I conclude that its proposed development for housing would not result in unacceptable harm to the character and appearance of the surrounding countryside. Whilst I find that some limited harm would result from the loss of a number of mature trees on the site, subject to the retention and enhancement of the remaining boundary landscaping, the harm would not be unacceptable. Consequently, the proposed development would satisfy Policies L15 and E1 of the SBLP in terms of its landscape and visual effects. Accordingly, the proposal would also be consistent with paragraph 17 of the Framework. Policy D1 of the SBLP, although referred to in the Council's reasons for refusal, applies to the detailed layout, design and landscaping of development which are reserved matters and not for determination in this appeal.

Housing Need and Supply

34. Whilst it is common ground that the Council is unable to demonstrate a 5 year supply of deliverable housing sites, the extent of the shortfall in the housing land supply is not agreed between the parties. The *Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin)* judgement establishes that, in carrying out the planning balancing exercise, the weight given to a proposal's benefit in increasing the supply of housing will depend on, for example, the extent of the shortfall, how long the deficit is likely to persist, what steps the local planning authority is taking to reduce it, and how much of it the proposed development would meet.
35. To boost significantly the supply of housing, paragraph 47 of the Framework expects local planning authorities to identify a supply of deliverable sites sufficient to meet 5 years' worth of their housing requirement. In turn the housing requirement should be based on meeting the full objectively assessed needs (OAHN) for market and affordable housing of their area.
36. In this case, the amount of housing capable of being delivered within the next 5 years is somewhere between 10,234 dwellings, the figure put forward by the Council, and 9,726 dwellings, the maximum figure accepted by the appellant at the inquiry. This is based on an analysis of the Council's Housing Trajectory (April 2017), containing a list of around 186 housing sites under construction,

- with planning permission awaiting a start on site, with a resolution to grant permission subject to a s106 agreement or awaiting planning permission.
37. The principal differences between the main parties were over just 15 sites. The appellant considered that constraints including an incomplete S106 agreement, a pending reserved matters application, a weak market location or the absence of a committed developer would delay delivery. However, on the whole, with a handful of exceptions, I found the Council's assumptions on lead in times allowing for these factors to be reasonable. The Council was also able to point to evidence of delivery over the last 2-4 years in some of the suggested weaker market areas, such as Easington and Peterlee. In the case of the trajectory sites at Finchale Training College in Durham City and land to the south of Wellfield Road in Wingate, the Council conceded that delivery of units starting in 2018/19 would be unlikely. This would reduce the deliverable supply over the next 5 years to around 10,190 units.
38. The housing requirement in the SBLP is out of date. The Council does not have an up to date OAHN or housing requirement which has been tested through examination. A planning appeal does not afford the opportunity for the kind of detailed analysis that takes place at a local plan examination. However, I have considered the evidence available on the OAHN and housing requirement for County Durham in order to arrive at a judgement on the extent of the shortfall, in the light of the guidance on housing needs assessments set out in the Planning Practice Guidance (PPG). I have not relied upon the Local Plans Expert Group (LPEG) methodology referred to in the Housing White Paper (2017) as at this stage it remains subject to further consultation.
39. The Council published three alternative OAHN figures in the CDP Issues and Options consultation document in 2016. These range from 1,533 dwellings per annum (dpa) to 1,629dpa and 1,717dpa for the period from 2014 to 2033 for the housing market area of County Durham. They are in line with the most recent 2014-based household projections as advised by the PPG, using different short-term and long-term historical migration trends to derive the three alternative demographic scenarios. The Council attaches equal weight to all three and whilst I note the criticisms of using short term migration trends, there was insufficient evidence before me to suggest any one migration assumption should carry more weight.
40. To take account of employment trends, the Council tested the three scenarios against forecast jobs growth based on economic activity rates (EAR) of 71% and 73%. Clearly a higher EAR with more of the existing population in work would require less new households to meet forecast jobs growth and therefore less additional dwellings. However, the most recent EAR is recorded at just below 71% and to achieve 73% would require an increase in the proportion of men and women aged 30-59 in work. Evidence from the Office of Budget Responsibility (OBR) on long term employment rates shows that an EAR of 73% has only been achieved in County Durham twice over the last 23 years, during which time (1993-2016) the average has been 68%.
41. However, even if an EAR of 73% were to be adopted as a reasonable policy aspiration for County Durham in the period up to 2033, comparing the job outcomes of the three alternative dwelling scenarios with job growth forecasts provided by the Cambridge, Experian and Oxford economic forecasting houses, shows that an OAHN of 1,533dpa would not be sufficient to support the average forecast jobs growth over that period.

42. Therefore, for the purposes of this appeal, the evidence points to a minimum OAHN of 1,629dpa on which to base the housing requirement for County Durham in order to calculate the shortfall in housing land supply. The Council's figures correctly add in the backlog and shortfall up to 2017, plus a 20% buffer for under delivery adopting the Sedgefield approach. Based on this an OAHN of 1,629dpa produces a 5 year housing requirement of 11,335 dwellings and an OAHN of 1,717dpa, a 5 year requirement of 12,180 dwellings. The 5 year housing supply of 10,190 dwellings would result in a shortfall of between 1,145 and 1,990 dwellings against these two housing requirements and a land supply of between 4.18 and 4.49 years.
43. In terms of affordable housing need, the County Durham Strategic Housing Market Assessment (2013) (SHMA) identifies a net shortfall of 378 affordable dpa. Although no adjustment has yet been considered to the OAHN or housing requirement to take account of affordable needs, this remains a significant proportion (15-18%) of the range of housing need identified by the Council.
44. In terms of steps being taken to address the shortfall, whilst there are extant permissions for around 15,000 dwellings, the housing trajectory shows that around a third of these are on large sites, which will not be built out within the next 5 years. Progress on the CDP has been paused pending the publication of the new standard OAHN methodology proposed in the Housing White Paper. An up to date Local Development Scheme is not available and at the inquiry the Council was unable to confirm a timetable for the delivery of the CDP. Accordingly, it appears that the adoption of a new local plan with sufficient sites allocated to address the housing supply shortfall is still at least 2 years away.
45. In the meantime, the proposed development would deliver 100 additional dwellings based on the revised illustrative masterplan, which according to the appellant's programme could be delivered within the next 5 years. Under the completed S106 agreement, 10% of the proposed dwellings would be affordable. On this basis, I conclude that the proposal would make an important contribution to reducing the shortfall in both market and affordable housing in County Durham over the next 5 years. This would accord with paragraph 47 of the Framework in boosting significantly the supply of housing and with saved Policy H19 of the SBLP in respect of the provision of affordable housing.

Other Matters

46. With regard to highway safety, a transport assessment was submitted with the application. The site would be accessed via a new junction onto the B1278. Although Salters Lane is a well-used route between Fishburn and Sedgefield, with vehicle speeds of up to 50mph recorded, the proposed access to the site has been designed to ensure adequate visibility to ensure safe stopping distances are achieved in both north and south directions along Salters Lane. A pedestrian refuge island is also proposed on the B1278 to enable safe access to the bus stop on the southbound side of the carriageway opposite the site entrance. Subject to these provisions which could be secured by condition, there is no evidence to suggest that traffic generated by the proposal would result in any severe impacts on the operational capacity or safety of use of the highway network. The highway authority has raised no objections.
47. I have concluded above that the reinstatement of the proposed street lighting scheme along Salters Lane, for which funding is provided through the unilateral

undertaking, is necessary to encourage journeys to be made by the most sustainable modes of travel. I acknowledge that the provision of a financial contribution to the Council to install the lighting scheme does not guarantee its provision. However, in the absence of a signed agreement from the Council covenanting to carry out the works, a legal undertaking from the appellant to pay the capital sum for the works before development commences is reasonable. It is comparable to the obligations for the education and open space contributions in the S106 agreement and should allow the highway authority ample time to install the lighting scheme before occupation of the development. Requiring implementation of the lighting scheme before occupation of the development would be an unreasonable obligation over which the appellant would have no control. I note the appellant's view that the provision of a commuted sum for ongoing maintenance of the lighting scheme on Salters Lane is not justified. However, it is reasonable that the development should finance the future upkeep of the lighting along the B1278, given the scheme would not otherwise be required. Separate funding for the upkeep of street lighting within the development itself is not necessary as this would typically be funded out of revenue budgets paid for by the Council Tax levy on new properties within the development.

48. Whilst it is common ground between the main parties that there is no basis to refuse permission on ecology grounds, the Ecological Appraisal (EA) and Bat Survey Report (BSR) submitted with the appeal recorded the presence of bat roosts within the Farm Villa building and the potential for habitats for breeding birds in the mature trees on site. Bats are a European Protected Species under Article 12 (1) of the European Commission's Habitats Directive. This prohibits the disturbing of species and damage to or destruction of their breeding sites or resting places. The Conservation of Habitats and Species Regulations 2010 places a duty on decision makers to have regard to the requirements of the Habitats Directive. It sets out three tests which need to be considered if a proposal could cause harm a protected species. These are that there should be an overriding public interest for the proposal, that there is no satisfactory alternative and that the proposals, including mitigation measures, would not be detrimental to the conservation of the species.
49. I relation to the first two tests I am satisfied that the proposed development and the need for housing are strongly in the public interest and that the demolition of Farm Villa is justified as part of the proposals. The BSR recommends a number of mitigation measures, including bat boxes on retained trees on the northern and western boundaries to provide receptor sites and roosting habitat during construction, and bat tubes in the gable ends of new houses, the construction of a bat roof void within a detached garage and appropriately designed lighting within the constructed scheme. Subject to these mitigation measures the proposed development is unlikely to have a significant effect on the local bat population and could provide habitat enhancement.
50. A range of other biodiversity mitigation and enhancement measures are proposed in the EA and the Biodiversity Enhancement and Outline Management Plan (April 2017) (BEOMP) submitted with the appeal. These include avoiding the clearance of trees or shrubs to be removed as part of the scheme during the bird breeding and nesting season. There are also measures to improve floral biodiversity, including a 15m wide green infrastructure buffer around the perimeter of the site which would connect to habitats in the surrounding

landscape, native tree and hedgerow planting, wildflower grasslands and a SuDS pond. The combination of features and measures have the potential to provide a net gain in biodiversity compared to the existing site conditions, in accordance with paragraph 109 of the Framework.

51. The development of up to 100 new homes would inevitably bring investment into the local economy. According to the appellant's evidence, the range of economic benefits would include 66 direct and indirect construction jobs and an estimated £1.3 million net additional expenditure each year into the local economy, supporting the creation of 20 new jobs, some of which could be in Sedgefield. I have no reason to doubt the accuracy of these estimates or the benefits they would bring to the local community.
52. The S106 agreement provides for a financial contribution towards the provision of 15 secondary school places at Sedgefield Community College to be paid in two stages before the completion of 75% of the dwellings. This would accord with saved Policy D8 of the SBLP. It would also provide public open space on site and a financial contribution of £184,500 towards the improvement of parks and gardens, outdoor sports space and allotment facilities in Sedgefield and Fishburn parishes. These would ensure the development complies with saved Policy L2 of the SBLP. As planning obligations these are necessary to mitigate the impact of the proposed development on local services and facilities. Whilst they would result in improvements to local facilities, this would be offset by the additional pressure on local services brought by the occupants of the development. Accordingly, any effect would be neutral.

Planning Balance and Conclusion

53. Paragraph 49 of Framework says housing applications should be considered in the context of the presumption in favour of sustainable development. At this appeal the Council is unable to demonstrate a 5 year supply of deliverable housing sites. Therefore, relevant policies for the supply of housing are out of date and, accordingly, the fourth bullet point of paragraph 14 of Framework on presumption in favour of sustainable development is engaged. There are two indents to consider under the fourth bullet point of paragraph 14.
54. First, it is necessary to consider whether there are specific policies in the Framework which indicate the development should be restricted. It has not been argued that the proposed development would be restricted by any of the policies listed in Footnote 9 of the Framework. The list is not exclusive and the Council argues that avoiding new isolated homes in the countryside in paragraph 55 of the Framework is one such restrictive policy. This is disputed by the appellant. However, even if I were to conclude that paragraph 55 is a restrictive policy under Footnote 9, I have established above in considering the location and accessibility of the appeal site that the proposed development would not be isolated. Given my conclusions on the effect of the proposal on the character and appearance of the countryside, there can be no policies in the Framework regarding the conservation and enhancement of the natural environment which say the development should be restricted. I have heard no other evidence to suggest that the appeal proposal is restricted under the second indent to the fourth bullet point of paragraph 14 of the Framework.
55. Second, under the first indent of the fourth bullet point of paragraph 14, it is necessary to consider whether any adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits, when assessed

against the policies of the Framework as a whole. I have concluded that the proposed development of up to 100 dwellings, including 10 affordable units, would make an important contribution to addressing the shortfall in market and affordable housing in County Durham over the next 5 years. I attach significant weight to this as a benefit given the extent of the shortfall in the 5 year housing land supply and the fact that the adoption of a new local plan with sufficient allocations to make up the shortfall is unlikely to be in place for at least another two years.

56. I also accord significant weight to the benefits of the proposal in reusing a derelict, brownfield site, fulfilling one of the core planning principles in paragraph 17 of the Framework and addressing a particular concern expressed by local residents, Sedgefield Town Council and the Sedgefield Village Action Group who gave evidence to the inquiry. The proposed ecological enhancements to the site which would support net gains in biodiversity sought by paragraph 109 of the Framework, the contribution to the local economy in terms of jobs and spending to support local facilities in Sedgefield and Fishburn, and the reinstatement of street lighting along Salters Lane, all represent benefits arising from the proposed development to which at least moderate weight should be given in the tilted balance.
57. In terms of adverse impacts, I have concluded that there would be some limited harm arising from the loss of a number of mature trees on the site. However, in the light of the scale of development accepted by Policy L15 and its key landscape constraints, any harm to the overall character and appearance of the surrounding countryside arising from the proposed housing development on the appeal site would neither be significant nor unacceptable, subject to conditions to retain and enhance the boundary landscaping on site. I have also concluded that the appeal site is a suitable location for housing. Notwithstanding its position in open countryside, the proximity of the site to Sedgefield and Fishburn and its accessibility by a range of means of transport would result in an acceptable relationship with the surrounding communities.
58. Taking everything into account including all other material considerations, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole. Therefore, the proposal represents sustainable development.
59. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, in accordance with s.38(6) Planning and Compulsory Purchase Act 2004. Although the proposal would fail to comply with saved Policies L15, H8 and H11 of the SBLP in terms of the suitability of the appeal site as a location for housing, due to the lack of a 5 year housing land supply these policies are out of date as policies relevant to the supply of housing. I have concluded that they carry limited weight in relation to this issue in the overall planning balance. The presumption in favour of sustainable development in paragraph 14 of the Framework is a material consideration, which, in this case, warrants a decision other than in accordance with the development plan.
60. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions specified below and the S106 agreement and undertaking.

Conditions and S106 obligations

61. I have considered which planning conditions are required having regard to the tests contained in the Planning Practice Guidance and the list of conditions supplied by the main parties. A number of the conditions are pre-commencement as the details they require to be submitted and approved by the local planning authority are fundamental to the development being permitted.
62. I have attached conditions limiting the life of the permission in accordance with the requirements of the Act and specifying the approved plans in the interest of certainty. A condition specifying the details of the reserved matters to be submitted for approval is necessary to ensure control over the impact of the development on the character and appearance of the surrounding area in terms of its appearance, landscaping, layout and scale.
63. A condition restricting the development to 100 dwellings is necessary and reasonable to preserve as much of the boundary landscaping as possible and allow supplementary structure planting to mitigate the visual impact of new housing on the surrounding countryside. A tree and hedgerow retention plan and protection measures are necessary to safeguard the amenity and ecological value of the trees and hedgerows on site during construction. An ecological mitigation scheme is required to safeguard protected species and enhance biodiversity. Reference to the provision of public open space in accordance with saved Policy L2 of SBLP is required in line with the public open space obligation in the S106 agreement.
64. Conditions requiring engineering details of the site access and internal road layout, a scheme for the new combined footway/cycleway on Salters Lane and the pedestrian refuge on the B1278 are necessary in the interests of highway safety and accessibility. A condition to ensure appropriate drainage is needed to manage the effects of surface water and sewage disposal on the surrounding area.
65. A construction method statement and separate controls over hours of construction and site work are necessary and reasonable to safeguard the amenities of the occupiers of surrounding properties and ensure highway safety. Due to the potential for soil and water contamination, a condition requiring a remediation scheme is necessary.
66. A Travel Plan is both necessary and reasonable to encourage occupiers of the development to use sustainable modes of travel and reduce car journeys. A condition requiring the provision of public art on site is also reasonable and necessary in accordance with saved Policy D9 of the SBLP and to enhance the quality of the environment for existing and future residents.
67. The permission is also subject to the signed S106 agreement, dated 14 June 2016, to secure the provision of affordable housing, public open space and education and off-site open space contributions, and the certified S106 undertaking, dated 21 June 2017, to secure the funding of the construction and maintenance of the Salters Lane lighting scheme.

M Hayden

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan – dwg. no. Y81:979.01; Proposed access arrangements and visibility splays – drg. No. 15047/GA/02; and the Residential Travel Plan, dated May 2016 (Rev 1).
- 5) The development hereby permitted shall comprise no more than 100 dwellings.
- 6) The details required to be submitted in compliance with condition 1 shall include:
 - i) Materials to be used in any external walling, roofing and hard surfacing, and window details.
 - ii) A tree and hedgerow retention plan in accordance with the results and measures set out in the Arboricultural Assessment, dated April 2017.
 - iii) The provision of public open space on site in accordance with saved Policy L2 of the Sedgefield Borough Local Plan (1996).

The development shall be implemented in accordance with the approved details and measures.

- 7) No development or site clearance work shall take place until all trees and hedgerows agreed for retention on the tree and hedgerow retention plan to be submitted as part of the reserved matters in compliance with conditions 1 and 6, are protected by the erection of fencing, comprising a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar in accordance with BS 5837:2012. The protection measures shall remain in place until the cessation of the development works.
- 8) Notwithstanding the access arrangements shown on the approved plans in condition 4, no development shall take place until full engineering details of the access onto the B1278, including visibility splays, and the internal highway network layout, including shared surfaces, private shared drives and pedestrian footways, together with a timetable for implementation of the works have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and timings.
- 9) No development shall commence until a scheme showing the route of a 3.0m wide combined footway/cycleway provision along the site frontage on Salters Lane B1278 or running north/south within the site, and a timescale for its

implementation, have been submitted to and approved in writing by the Local Planning Authority. The construction of the combined footway/cycleway shall be implemented in accordance with the approved scheme and agreed timescale.

- 10) No development shall commence until details of a scheme showing the construction of a pedestrian refuge island on the B1278, and a timescale for its implementation, have been submitted to and approved in writing by the Local Planning Authority. The construction of the pedestrian refuge island scheme shall be implemented in accordance with the approved scheme and agreed timescale.
- 11) No development shall commence until a detailed scheme for the disposal of foul and surface water has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with approved details. None of the dwellings hereby permitted shall be occupied until the works for the disposal of foul and surface water have been provided.
- 12) No development shall commence until a scheme of ecological mitigation and enhancement in accordance with the measures set out in the Ecological Appraisal, dated April 2016, the Bat Survey Report, July 2016, and the Biodiversity Enhancement & Outline Management Plan, dated April 2017, including a timetable for implementation and retention of the measures, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and any mitigation works carried out shall be maintained for the life of the development.
- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) routing agreements for construction traffic;
 - ii) designation, layout and design of construction access and egress points;
 - iii) the provision of directional signage on and off site;
 - iv) the parking of vehicles of site operatives and visitors;
 - v) loading and unloading of plant and materials;
 - vi) storage of plant and materials used in constructing the development;
 - vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - viii) wheel washing facilities and/or other measures to prevent mud and other material migrating onto the highway;
 - ix) measures to control the emission of dust and dirt during construction;
 - x) measures for the reduction and suppression of noise and vibration;
 - xi) a scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works;
 - xii) delivery, demolition and construction working hours;
 - xiii) measures for liaison with the local community and procedures to deal with any complaints received.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) Demolition, external construction works, deliveries and running of external plant and equipment shall take place only between 0800 to 1800 on Mondays

to Fridays and 0800 to 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

- 15) No development shall take place until a detailed remediation scheme to deal with the contamination risks identified in the Geoenvironmental Appraisal (report no. 2339/1A, dated May 2016) and to accord with the measures set out in the Remediation Strategy (report no. 2339/2, dated May 2016) has 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 options, the proposed remediation objectives and remediation criteria, a description and programme of the works to be undertaken and a 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 in accordance with the agreed programme. No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority. If during the remediation or development works any contamination is identified that has not been identified in the Geoenvironmental Appraisal, then remediation proposals for this material shall be agreed in writing with the Local Planning Authority and the development completed in accordance with any amended specification of works and timescales. Upon completion of the remedial works, 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 is occupied.
- 16) Notwithstanding the details shown in the Residential Travel Plan approved by condition 4, prior to the occupation of the first dwelling hereby approved details of the Travel Plan Coordinator shall be submitted to and approved in writing by the Local Planning Authority.
- 17) Prior to the occupation of the first dwelling hereby approved, a scheme for the provision of public art on the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail the appearance of the artwork, a maintenance schedule and a timetable for implementation. The scheme shall be undertaken in accordance with the approved details and timetable.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Clay	of Counsel, instructed by Durham County Council (DCC)
He called:	
John Day MA	Senior Landscape Officer, DCC
Colin Harding BA (Hons) DipTP MRTPI	Senior Planning Officer, DCC
Graeme Smith BA (Hons) DipTP MA MRTPI	Spatial Policy Team Leader, DCC
Thomas Bennett BSc (Hons) MSc MRTPI	Senior Spatial Policy Officer, DCC

FOR THE APPELLANT:

Richard Sagar	Partner, Walker Morris Solicitors LLP
He called:	
Phil Rech BA B Phil LD CMLI	Director, FPCR Environment & Design Ltd
Philip Owen BEng (Hons) CEng MICE MIHT	Director, Optima Highways & Transportation
Jonathan Dunbavin BSc MCD MRTPI	Director, ID Planning Ltd
Darren Wisher BA MA Econ	Managing Director, Regeneris

INTERESTED PERSONS:

Alan Patterson	Local Resident, Sedgefield
David Brown	Local Resident, Sedgefield
Sarah Guest	Sedgefield Village Action Group (SVAG)
John Robinson	County Councillor, DCC (Sedgefield Ward)

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Highways Statement of Common Ground, dated 4 May 2017.
- 2 Inquiry Note on Revised Illustrative Masterplan changes and consultation – dated 6 June 2017, prepared by Walker Morris LLP.
- 3 Appellant’s Opening Submissions, dated 6 June 2017.
- 4 Appeal decision APP/X1355/W/16/3150609 – Land to the south of Eden Drive, Sedgefield, County Durham, dated 4 October 2016.
- 5 Opening submissions on behalf of the Local Planning Authority, dated 6 June 2017.
- 6 Statement from Alan Patterson entitled Old Hospital Site, June 2017.
- 7 Statement on behalf of Sedgefield Village Action Group, dated 6 June 2017.
- 8 Supreme Court judgement on Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire east Borough Council, given on 10 May 2017 [2017] UKSC 37 (inquiry CD/F19).
- 9 NETPark Phase 3A – Design and Access Statement, Durham County Council (DCC), dated December 2016.
- 10 The New Oxford Dictionary of English definition of ‘isolated’, undated.
- 11 Letter from DCC to Sedgefield Town Council regarding the Sedgefield Neighbourhood Plan, dated 7 June 2017.
- 12 Letter from Brandon Lewis MP (former Minister of State for Housing and Planning) regarding Landscape Character, dated 27 March 2015.
- 13 Tables prepared by DCC setting out OAN in relation to demographic scenarios and employment forecasts.
- 14 Tables prepared by the Appellant setting out housing requirement under different economic scenarios.
- 15 Statement of agreed differences on OAN for Housing submitted by DCC and Appellant, dated 7 June 2017.
- 16 Clarification on the LPA’s position on the Highways Statement of Common Ground, signed by Colin Harding, Senior Planning Officer, dated 8 June 2017.
- 17 Suggested conditions agreed between DCC and the Appellant, submitted on 14 June 2017.
- 18 Schedule of ‘Permitted Not Started’ housing sites with DCC and appellant comments, together with emails from some landowners/developers/agents, submitted by DCC on 14 June 2017.
- 19 Note on compliance of Planning Obligations with CIL Regulations, submitted by DCC, dated 14 June 2017.
- 20 Letter from Barratt Homes to appellant regarding housing development in County Durham, dated 6 June 2017.

- 21 Email dated 30 May 2017 from Philip Owen to Darren Hubbard at DCC regarding cost estimates for street lighting on Salters Lane.
- 22 Email dated 13 June 2017 from Walker Morris to Philip Owen regarding revised street lighting costs.
- 23 Durham County Council – Upgrade of Street Lighting, Benefits to Cost Ratio, submitted by Appellant on 14 June 2017.
- 24 Note and spreadsheets providing estimated street lighting costs and commuted sum for Salters Lane scheme, submitted by DCC on 14 June 2017.
- 25 Plans of Proposed Design for Salters Lane street lighting scheme, dated 24 May 2017, submitted by DCC.
- 26 S106 Agreement and Planning Obligation between DCC and Stella property Investments Limited, dated 14 June 2017.
- 26a Summary of S106 Agreement, submitted by appellant.
- 27 Closing submissions on behalf of DCC, from Jonathan Clay, dated 14 June 2017.
- 28 Appellant’s Closing Submissions, from Richard Sagar, dated 14 June 2017.

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 29 Unilateral Undertaking from Stella Property Investments Ltd to DCC, regarding Salters Lane street lighting scheme, dated 21 June 2017.
- 30 Explanatory note from Appellant on S106 Unilateral Undertaking, dated 20 June 2017.
- 31 Response on behalf of DCC to Appellant’s Explanatory note accompanying S106 Unilateral Undertaking, dated 28 June 2017.