
Appeal Decision

Site visit made on 7 August 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 31 August 2017

Appeal Ref: APP/X1355/W/17/3175371

Etherley Road, Low Etherley, Co. 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 Ms Hazel Kellett against the decision of Durham County Council.
 - The application Ref DM/16/03507/OUT, dated 8 November 2016, was refused by notice dated 21 December 2016.
 - The development proposed is the construction of 8 new dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application has been submitted in outline with all matters reserved for future consideration. I have dealt with the appeal on that basis, treating indicative layouts such as those in the Design and Access Statement as being for illustrative purposes only.

Main Issues

3. The main issues in this appeal are:
 - The effect on the character and appearance of the area;
 - Whether the proposed development would make adequate provision for affordable housing; and
 - Whether suitable vehicular access can be provide to the site.

Reasons

Character and Appearance

4. The appeal site consists of the southern part of a field to the south of the B6282, which is one of the main roads to the village of Low Etherley. Whilst the village contains a mixture of housing designs and layouts, the overriding character of the area in the vicinity of the appeal site consists of linear frontage development extending along the highway. The area to the east has a more rural character, including farmsteads set back from the highway.
5. The site is outside of the development limits for Low Etherley as defined in the Teesdale Local Plan 2002 (TLP). However, the area to the north of the field has

an extant outline planning permission¹ for 13 dwellings, with all matters reserved for future consideration. The boundaries of this previous permission and the current appeal overlap. Although the depth of the extant outline permission projects further south than the curtilages of the terraces to the west, the extent and arrangement of the site indicates that the approved outline development would respect the character of the frontage development to the west and north which extends along the highway.

6. Based on the proposed site boundary and the relationship with the previous outline permission, it is apparent that the proposal would lead to the introduction of further residential development to the rear of the previous approval. In effect, the proposal would result in the development of a small residential estate of a suburban character projecting into the countryside, which would be at odds with the frontage development which defines the streetscape in the area of the appeal site.
7. Whilst the existing hedging and the development of the outline permission to the north of the site would provide a degree of screening, I consider that the proposed development and its incongruous relationship to the streetscape and surrounding countryside would be readily apparent from the highway and the wider area.
8. The appellant emphasises that the proposal would respect the existing field boundary to the south. However, the southern field boundary is an agricultural feature which does not respond to the built form of the village, and does not therefore justify the projection of built development into the landscape. I also acknowledge that the buildings of Greencroft Farm to the east of the site also project into the countryside. However, although substantial, this farmstead is representative of the rural area on the edge of the village, in contrast to the suburban character likely to result from the proposed development.
9. In support of the appeal, my attention has been drawn to two planning approvals² for housing development in the vicinity of the site. However I note that these proposals were of a smaller scale than the appeal proposal and were on land which contained buildings. The circumstances of those developments are therefore not directly comparable to that before me, which I have in any event determined on its own merits.
10. The appellant has emphasised that the site does not have a statutory landscape designation and that the Council's landscape officer has not objected to the proposal. However, these matters do not overcome the harm that the proposal would have on the inherent character of the countryside and the setting of the village.
11. I conclude that the appeal proposal would cause substantial harm to the countryside setting of Low Etherley and the character and appearance of the area. The proposal would therefore be contrary to Policy GD1(A) of the TLP which states that development should contribute to the quality and environment of the surrounding area. This policy is broadly consistent with the National Planning Policy Framework (the Framework) in respect of requiring development to contribute positively to the quality of the area and respond to local character.

¹ Application ref: DM/14/01540/OUT

² Application refs: 6/2011/0053/DM and DM/16/01611/FPA

Affordable Housing

12. Policy H14 of the TLP states that the Council will, in appropriate circumstances as identified by a needs assessment of the district, seek to negotiate with developers for an element of affordable housing. The comments of the Council's Spatial Policy Team state that evidence of need for affordable housing is provided in the Strategic Housing Market Assessment (SHMA) and that viability evidence confirms that a level of 10% is appropriate within this area of the County.
13. Although the evidence from the SHMA has not been provided to me, no evidence to contradict the identified need for affordable housing has been provided either. Although policy H14 refers to seeking negotiations, the intent of the Policy is clearly to require affordable housing where appropriate and this reflects the provisions of the Framework in respect of delivering a wide choice of high quality homes and to create sustainable communities. The Council confirm that there is evidence of a need for one affordable housing unit in the scheme in accordance with Policy H14 and the Framework and that this could be secured through an agreement or undertaking. However, no such agreement has been forthcoming.
14. The appellant considers that the development is exempt from such a requirement as it is for less than 10 dwellings, in accordance with the Written Ministerial Statement (WMS) of 28 November 2014. However, the Council consider that the application is part of a wider single site which includes the land to the north which has already been granted outline planning permission for 13 dwellings. This would take the total number of dwellings provided to 21, which exceeds the threshold of the WMS. The Council have referred to a High Court Judgement³ which stated that it is a matter of planning judgement as to whether an application is part of a wider single site. As the boundary of the appeal site would overlap with the extant approval to the north and they are within the same ownership, in my view it is clear the proposal is part of a wider single development. I consider that the case law on this matter is compelling and that the Council's conclusion that the proposal is part of a larger scheme is valid.
15. I conclude that the proposal does not make adequate provision for the supply of affordable housing. The proposal would therefore be contrary to Policy H14 of the TLP in relation to the provision of affordable housing. This Policy is broadly consistent with the Framework in respect of delivering a wide choice of high quality homes and to create sustainable communities.

Vehicular Access

16. Although the matter of access has been reserved for future consideration, the Council state that the outline application must indicate the access points to the development. In this regard, they consider the proposal to be a standalone scheme which does not include a means of access to the B6282.
17. However, as stated above in relation to affordable housing, it is clear that the appeal proposal and the site to the north represent a single scheme in that they are within the same land ownership and the application boundaries

³ New Dawn Homes Limited v Secretary of State for Communities and local Government & Tewksbury Borough Council [2016] EWHC 3314 (Admin)

overlap. The matter of access from the highway could therefore be readily addressed by an appropriate planning condition or the consideration of future applications in relation to reserved matters.

18. I therefore conclude that access to the highway could be provided as a part of the development and that the scheme does not there conflict with Policy GD1(Q) of the TLP or the provisions of the Framework in respect of providing safe and suitable access to the site.

Other Matters

19. I note the frustrations expressed by the appellant in relation to the advice from the Council, and the lack of negotiation on affordable housing and highways matters prior to the determination of the planning application. However, these are not matters for this appeal which I have determined on its planning merits.
20. I have had regard to the comments raised by residents of the area and the Parish Council raising matters such as highway safety, lack of services, impact on farming, drainage, ecology, living conditions and housing supply. I note that this also includes a comment in favour of the proposal, subject to the provision of a rear access lane and car parking for nearby properties. However, consideration of these matters has not led me to a different conclusion on this appeal.

Planning Balance and Conclusion

21. The Council accepts that it does not have an identified and deliverable 5 year supply of housing land. Paragraph 49 of the Framework states that in these circumstances relevant policies for the supply of housing should not be considered up to date. The appeal proposal should therefore be considered on the basis of paragraph 14 of the Framework which states that where relevant policies are out of date permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
22. The proposal would provide the benefit of adding 8 dwellings to the mix and supply of housing, in an area where the Council cannot demonstrate a five-year supply of deliverable housing sites. I also note that the Council consider that the dwellings would have reasonable access to services and facilities. However, due to the modest number of dwellings which would arise from the proposal this benefit would be limited.
23. The appellant contends that the appeal site should be classed as 'brownfield' or previously developed land (PDL). She also states that development would allow a mine entry and mineral deposits to be safely dealt with. However, based on the evidence presented to me, mining activity on the site is of a historical nature and I saw that the site has been reclaimed and is used as a field for grazing. Whether or not this reclamation was achieved as a result of development control procedures, I consider that the site does not have the characteristics of PDL and should not be assessed as such. Furthermore, no evidence of ongoing problems arising from previous mining activity on the site has been presented to me. These matters do not therefore weigh in favour of the proposal.

24. Notwithstanding my conclusions in relation to vehicular access, I have concluded that the proposal would cause substantial harm to the character and appearance of the area and would not make suitable provision for affordable housing. I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The material considerations considered above do not justify making a decision other than in accordance with the development plan. When assessed against the development plan and the Framework considered as a whole, on balance, the overriding consideration is that the scheme would fail to contribute to the environmental role of sustainable development in relation to protecting and enhancing the natural and built environment and the social role of providing housing that reflects the community's needs.
25. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR