



Appeal Decision

Site visit made on 14 November 2017

by Caroline Jones BA (Hons) DipTP MTP MRTPI

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

Decision date: 7th December 2017

Appeal Ref: APP/X1355/W/17/3180304

Old County View, Hett Hills, Pelton Fell, Durham DH2 3JU

- 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 Dr Nebeel Naroz against the decision of Durham County Council.
 - The application Ref DM/16/04069/OUT, dated 22 December 2016, was refused by notice dated 16 February 2017.
 - The development proposed is new three bedroom detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for new 3 bedroom detached dwelling at Old County View, Hett Hills, Pelton Fell, Durham DH2 3JU in accordance with the terms of the application, Ref DM/16/04069/OUT, dated 22 December 2016, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made in outline with all matters reserved for subsequent approval. To the extent that the application contains information relating to the reserved matters I shall treat the details as being indicative only.
3. Following the submission of a revised Arboricultural Impact Assessment, the Council has confirmed that the Council's Arboricultural Officer and the County Ecologist no longer have concerns, subject to condition. Given the above, the Council no longer considers the second reason for refusal to be applicable. Having regard to the submitted information and from my observations on site, I have no reason to reach a different view on this matter.
4. Following the submission of the appeal, on 15 November 2017, the judgement in respect of *Braintree District Council v Secretary of State for Communities and Local Government & Ors* [2017] EWHC 2743 (Admin) was handed down. The judgement concerned the meaning of 'isolated homes' within paragraph 55 of the National Planning Policy Framework (the Framework). The parties have been given the opportunity to comment on any implications this judgement may have on this appeals determination and I have taken those comments into consideration.

Main Issue

5. Whether the site is in a suitable location having regard to the accessibility of services and facilities.

Reasons

6. The appeal site is part of the garden belonging to a property known as Old County View. The site lies within a small cluster of development comprising two dwellings, a public house and hotel and associated manager's house. The appeal site lies approximately 400m to the west of Pelton Fell, a small settlement with a limited range of services and facilities.
7. The site lies within the open countryside for planning policy purposes. Policy HP6 of the Chester Le Street District Local Plan (2003) (LP) states that proposals for residential development not allocated in the LP will only be permitted within the defined settlement boundaries of certain settlements. As the site lies outside of any defined settlement boundary, the location of the development would conflict with Policy HP6.
8. There is no dispute between the parties that the Council cannot formerly identify a 5 year supply of housing. I had have regard to the Council's reference to the Government's consultation 'Planning for the Right Homes in the Right Places'. However, as the proposals do not yet form part of Government policy and may be subject to further change I give this little weight. In light of the above, in accordance with paragraph 49 of the National Planning Policy Framework (The Framework) and as agreed by the Council, the tilted balance in paragraph 14 of the Framework is engaged. For decision taking, this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted.
9. Following the Braintree judgement, the Council accept that the proposal would not constitute an isolated dwelling in the countryside as defined by paragraph 55 of the Framework. Having regard to the judgement, and the location of the dwelling amongst a small cluster of built development, I concur with this position.
10. Nonetheless, the Council submit that, by virtue of its location, future occupants would have poor access to services and facilities by more sustainable modes of transport and would therefore be reliant on the private car. In this respect, it considers that the proposal runs contrary to paragraph 55 of the Framework which seeks to restrict housing in rural areas to locations where housing will enhance or maintain the vitality of rural communities. Given that the shortfall in its 5 year supply is not significant, the Council is of the opinion that the adverse impacts as a result of the proposal's unsustainable location would outweigh the limited contribution and benefits associated with only one dwelling.
11. The appeal site lies approximately 400m to the west of Pelton Fell which can be accessed along a lit footpath from opposite the site. Services and facilities include a GP surgery, a community centre, Post Office and newsagents, which are located around 1.8km from the site. This is not an unreasonable walking and cycling distance along what appeared to me to be a practical route. Whilst there would be some people that would find the distance involved undesirable that does not, in my view, make the site inherently unsustainable. The option to walk or cycle is available and I see no reason why it would not be taken up by people that are so minded.

12. Furthermore, the bus stop opposite the site provides an hourly service Monday to Saturday, including into the evening, to the larger settlements of Chester Le Street and Newcastle upon Tyne where a full range of facilities and services are available to meet day to day needs. A school service also operates from this bus stop to a number of nearby schools. Even if the Link2 service could not be relied upon as an alternative, I am satisfied that the other bus services would provide future occupants with sufficient opportunity to travel by public transport. In light of the above, I consider that the future residents of the new dwelling would have a real choice of how to travel to services and facilities by modes of transport other than the private car and find no harm in this regard. This is consistent with the Framework's aim to make the fullest use of non-car modes of transport and I find no conflict with paragraph 55 of the Framework in this respect.

Overall Planning Balance

13. The development would be in conflict with Policy HP6 of the LP. This conflict is a matter to be weighed in the planning balance. For the reasons I have set out, I find that the site would be a suitable location for the proposed dwelling with good access to services and facilities by modes of transport other than the private car. The proposal would also make a small, but nonetheless positive contribution to the supply of housing.
14. The Council cannot demonstrate a five year housing land supply and so the tilted balance in paragraph 14 is engaged. Having considered all matters relevant to the appeal, there are no adverse harms that would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. Furthermore, there are no specific policies in the Framework that indicate development should be restricted. In this case, I consider that the presumption in favour of sustainable development is a material consideration of sufficient weight to indicate a decision other than in accordance with the development plan should be taken.

Conditions

15. I have had regard to the Council's suggested conditions. A condition to ensure the development is carried out in accordance with the approved plan is necessary in order to ensure certainty. As all matters are reserved for future approval, I have not included those plans which contain information relating to the reserved matters as I have treated those as being indicative only. In the interests of safety, a condition relating to coal mining legacy issues is necessary. I have varied the Council's wording to more closely reflect that suggested by The Coal Authority as detailed in the Officer Report. A condition requiring the mitigation recommended in the Arboricultural Impact Assessment is necessary in order to safeguard protected trees.

Conclusion

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

Caroline Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, 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: Drawing No. 002 Revision A.
- 5) Prior to the commencement of development a scheme of investigation to assess the nature and extent of coal mining risks affecting the site, including a scheme of intrusive site investigations, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented as approved and a report of the findings arising from the intrusive site investigations and any recommended remediation works shall be submitted to the local planning authority for approval. Any scheme of remedial works shall be implemented as approved.
- 6) No development shall take place until the mitigation measures, as set out within Part 5.0 of the submitted Arboricultural Impact Assessment, (ref. HAS_OldCountyVw_AIA1.4) have been undertaken, including the erection of protective tree fencing.