
Appeal Decision

Site visit made on 16 September 2019

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th October 2019

Appeal Ref: APP/W4515/W/19/3230263

Scaffold Hill Farm, Whitley Road, Benton, Newcastle upon Tyne

- 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 The Northumberland Estate against the decision of North Tyneside Metropolitan Borough Council.
 - The application Ref 18/00081/OUT, dated 17 January 2018, was refused by notice dated 20 December 2018.
 - The development proposed was originally described as 'Outline Application for up to 44 dwellings incorporating the undergrounding of overhead power cables and re-provision of allotments.'
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Decision

1. The appeal is allowed and planning permission is granted for up to 38 dwellings incorporating the undergrounding of overhead power cables and re-provision of allotments at Scaffold Hill Farm, Whitley Road, Benton, Newcastle upon Tyne in accordance with the terms of the application, Ref 18/00081/OUT, dated 17 January 2018, subject to the conditions set out in the Schedule to this Decision.

Costs

2. An application for costs, made by The Northumberland Estate against North Tyneside Metropolitan Borough Council, was withdrawn by the applicant on 29 July 2019. Consequently, I have not considered the matter further.

Procedural Matters

3. The application was for outline planning permission with all matters reserved. The description of development on the application form is as set out in the banner heading above and refers to up to 44 dwellings. However, prior to the Council's determination of the application, an amended indicative layout showing a reduced number of dwellings was submitted. Both the Council's decision notice and the appeal form describe the proposal as 'Outline application for up to 38 dwellings incorporating the undergrounding of overhead power cables and re-provision of allotments.' I have considered the appeal on this basis, as no party would be prejudiced or caused any injustice by my doing so.
4. The Council chose not to defend any of the reasons for refusal. Nevertheless, I must consider and determine the appeal based on the evidence before me.

Main Issues

5. The effect of the proposal on the character and appearance of the area, biodiversity, highway safety in relation to A191 crossing points and flood risk.

Reasons

Character and appearance

6. The appeal site consists of fields to the south of a housing development which, at the time of my site visit, was under construction. To the south of the site lies Scaffold Hill Farm, a non-designated heritage asset, together with fields and woodland in Rising Sun Country Park. To the east is the A19 and to the west is the A191. Development in the surrounding area is predominantly residential.
7. The indicative site layout plan demonstrates that the quantum of development proposed could be satisfactorily accommodated. The scheme would create an appropriate edge to the residential development in the area and would retain a reasonable buffer between the site and nearby non-designated heritage asset.
8. Details relating to access, appearance, landscaping, layout and scale would be considered at the reserved matters stage. Subject to conditions relating to external materials, levels and hard and soft landscaping, I consider that the proposal would not have a harmful effect on the character and appearance of the area and would accord with the design aims of LP Policy DM6.1.

Biodiversity

9. The Northumbria Coast Special Protection Area (SPA) includes sections of the North Tyneside coastline. However, the appeal site is sufficiently distant that it would be unlikely, alone or in combination with other plans and projects, to have a significant effect on this protected site in relation to recreation disturbance. Residents would be required to cross a main trunk road to reach the coast and I consider that, in the particular circumstances of this case, any increases in regular recreational activity are likely to take place in green space closer to the appeal site.
10. The development would provide opportunities to create and enhance habitat and, subject to conditions to secure this and to ensure that protected species and their habitat are protected, I conclude that the appeal proposal would enhance biodiversity in accordance with the biodiversity protection and enhancement aims set out in LP Policies DM5.4 and DM5.5 and the National Planning Policy Framework (Framework).

Highway safety

11. Based upon the evidence before me, a range of improvements to transport infrastructure have recently been implemented along the A191 corridor in the vicinity of the appeal site. These include junction improvements, pedestrian crossing facilities and new pedestrian and cycle links. I note that pedestrian access to many nearby retail, leisure and education facilities would not involve crossing the A191. Moreover, I note that the appeal proposal would generate a very small number of additional pedestrian movements during peak hours.
12. For these reasons I conclude that the proposal would not have a harmful effect on highway safety in relation to A191 crossing points and would accord with the sustainable transport aims of LP Policy DM7.4 and the Framework.

Flood risk

13. The submitted details indicate that surface water attenuation within the site would comprise a combination of underground oversized pipes and a storage pond. On the basis of the evidence before me, and subject to the imposition of conditions requiring the approval and implementation of surface water drainage works, I conclude that the proposal would not have a harmful effect on flood risk and would accord with the flood risk aims of LP Policy DM5.12.

Planning Obligations

14. A signed and executed planning obligation in the form of an agreement under section 106 of the Town and Country Planning Act 1990 has been provided. This agreement secures the provision of 25% of the total number of dwellings to be constructed as affordable housing units. It also secures financial contributions towards the cost of providing additional places at a school in the borough; the provision and/or improvement of informal play areas at the Rising Sun Country Park (RSCP); the provision of equipped play to the Holystone area of RSCP; the provision and/or improvement of recreational parks within RSCP; the provision and/or improvement and enhancement of strategic greenspace within the vicinity of the site; the provision of public transport and Travel Plan delivery and monitoring.
15. The agreement is necessary to make the development acceptable in planning terms, directly related to the proposal and fairly and reasonably related in scale and kind to the development. It therefore accords with the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework. I have taken the planning obligation into account and attached weight to it in reaching my decision.

Other Matters

16. Residents have raised wider concerns including disruption during the construction phase, the presence of former mine workings, strain on local facilities and increased traffic congestion. In the interests of residents' living conditions, adherence to a Construction Method Statement would minimise disruption from construction; this could be secured by condition. Likewise, conditions could be imposed to ensure there was no risk to the health and living conditions of future residents from unstable land. Developer contributions would be secured towards primary school education, green space, parks and play provision. I have no evidence that the development of up to 38 additional houses in this area would result in any noticeable effect upon traffic congestion.

Conditions

17. The Council has suggested a significant number of planning conditions. I have considered these conditions against paragraphs 54 and 55 of the Framework, the Planning Practice Guidance and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permission. Where appropriate I have re-drafted and merged the Council's suggested conditions.
18. I have imposed conditions requiring the submission and approval of details of the access, appearance, landscaping, layout and scale of the development (the 'reserved matters'), and stipulating time limits for the submission of these reserved matters and commencement of development.

19. In the interests of certainty, a condition requiring the development to be carried out in accordance with approved plans and details is necessary.
20. A condition to secure a Construction Method Statement, including hours of construction and deliveries, is necessary in the interests of residents' living conditions. In the interests of the health and living conditions of future occupants I have imposed conditions relating to land instability, contamination, noise attenuation and ventilation.
21. Details of existing and proposed ground levels and levels of thresholds and floor levels in the proposed dwellings are required in the interests of amenity and access and to reduce flood risk. I have imposed conditions relating to drainage in the interests of residents' living conditions, to minimise flood risk and pollution and to conserve and enhance the natural environment. In the interests of the character and appearance of the area, I have imposed conditions relating to external materials and limiting the number of dwellings.
22. In order to conserve and enhance the natural environment, conditions are necessary to secure measures to provide net gains for biodiversity on the site, a repeat badger survey and mitigation plan prior to construction commencing and a Great Crested Newt method statement, as well as to protect landscape features and prevent vegetation removal during the bird nesting season. I have imposed a condition requiring details of both hard and soft landscape works. This is necessary in order to conserve and enhance the natural environment, achieve well-designed places and promote healthy communities.
23. To ensure a safe and suitable access to the site and in the interests of promoting sustainable transport, conditions are necessary to secure the provision of the new means of access, stopping up of the existing access points not incorporated into the development and implementation of the Travel Plan.
24. The requirements relating to land instability, contaminated land, the Construction Method Statement, landscaping works and protection and biodiversity measures are so fundamental to the development that it is necessary to secure them by way of pre-commencement conditions.
25. I have no evidence that a condition requiring submission and approval of a car park management strategy is necessary or relevant to the development permitted. Likewise, I have not been provided with evidence to demonstrate it is reasonable or necessary to impose a condition requiring amendments to the Travel Plan to include additional travel passes. It is not necessary to impose conditions requiring a scheme to allow vehicles to turn within the site, details of a roundabout or compliance with the Council's housing standards, as these would be considered at reserved matters stage. Suggested conditions relating to public rights of way are not necessary because any such works would be covered by separate statutory procedures.

Conclusion

26. For the foregoing reasons I conclude that the appeal should be allowed.

CL Humphrey

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. 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.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans and details:
 - Application form
 - Composite Plan 119971/8016 C
 - Cable Construction Sections 119971/8015 C
 - Country Park Habitat Plan 119971/8011/H
 - Outline landscape strategy plan 119971/8010/ E
 - Cable Construction Zone plans 119971/8013 B
 - Transport Statement and Travel Plan 119971/01
- 4) Notwithstanding Condition 3, the development hereby permitted shall include no more than 38 dwellings.

Contaminated Land

- 5) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS10175: Investigation of potentially contaminated sites
 - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme 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 option(s), the proposed remediation objectives and remediation criteria, and a description and programme of

the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development, or relevant phase of development, is occupied.

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

Land Instability

- 8) No development shall commence until a site investigation of the nature and extent of any land instability has been carried out in accordance with a methodology which shall have previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development takes place. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority and the site shall be remediated in accordance with the approved measures before any development takes place.
- 9) If, during the course of development, any unexpected land instability issues are found which were not identified in the site investigation, additional measures for their remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Construction Method Statement

- 10) No development shall commence until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall provide details of:
- i) a scheme indicating the route for heavy construction vehicles to and from the site;
 - ii) access to the site for all site operatives (including those delivering materials) and visitors;
 - iii) loading and unloading of plant and materials, including a turning area within the site for delivery vehicles;
 - iv) the parking of vehicles of site operatives and visitors;
 - v) storage of plant and materials used in constructing the development;

- vi) wheel washing facilities;
- vii) measures to control the emission of dust and dirt during construction;
- viii) delivery, demolition and construction working hours.

The approved CMS shall be adhered to throughout the construction period for the development.

Landscaping

- 11) Notwithstanding the details to be submitted pursuant to Condition 1, no development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) a statement setting out the design objectives and how these will be delivered;
 - ii) earthworks showing existing and proposed finished levels or contours;
 - iii) retaining structures, means of enclosure and boundary treatments;
 - iv) facilities for the storage of refuse, recycling and garden waste;
 - v) cycle storage;
 - vi) vehicle parking layouts;
 - vii) vehicle and pedestrian access and circulation areas;
 - viii) hard surfacing materials;
 - ix) minor artefacts and structures;
 - x) proposed and existing functional services above and below ground [e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant];
 - xi) lighting;
 - xii) planting plans;
 - xiii) written specifications (including cultivation and other operations associated with plant and grass establishment);
 - xiv) schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;
 - xv) protection and enhancement of all existing ponds and wetlands within the site and all new ponds and scrapes;
 - xvi) the number, location and layout of the allotments and associated parking provision;
 - xvii) an implementation programme, including phasing of work where relevant; and
 - xviii) a management and maintenance scheme, to include survey, monitoring and reporting of Great Crested Newt and any new habitat.

The landscaping works shall be carried out in accordance with the approved details and implementation programme. The completed scheme shall be managed and maintained in accordance with the approved management and maintenance scheme.

Landscaping protection

- 12) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods including a scheme of supervision (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 13) The details submitted in accordance with Condition 12 shall include:
 - i) a plan showing the position of every tree on the site and on land adjacent to the site that could influence or be affected by the development, indicating which trees are to be removed;
 - ii) a schedule in relation to every tree identified listing:
 - information as specified in paragraph 4.4.2.5 of British Standard BS5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and,
 - any proposed pruning, felling or other work;
 - iii) in relation to every existing tree identified to be retained on the plan referred to in i) above, details of:
 - any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and,
 - all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS5837) (or in an equivalent British Standard if replaced);
 - iv) areas of existing landscaping and ponds to be protected from construction operations and the method of protection.
- 14) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the construction period or within five years following completion of the development hereby permitted, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.
- 15) If, within five years following completion of the development hereby permitted, any retained tree is cut down, uprooted or destroyed or dies, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be specified in writing by the local planning authority.

[n.b. In conditions 12 - 15 above "retained tree" means an existing tree or hedgerow which is to be retained in accordance with the approved plans and particulars.]
- 16) All tree work shall be carried out in accordance with British Standard BS3998: Tree work: Recommendations (or an equivalent British Standard if replaced).

Biodiversity

- 17) No development shall commence until a Great Crested Newt Method Statement, including a scheme of supervision by an Ecological Clerk of Works, has been submitted to and approved in writing by the local planning authority. The approved Method Statement shall be adhered to throughout the construction period for the development.
- 18) No development shall commence until a repeat badger survey has been undertaken and a survey report and mitigation plan have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 19) No development shall commence until details of measures to provide net gains for biodiversity on the site, including the number, specification, locations and timing of installation of hibernacula, bat bricks and bird boxes, have been submitted to and approved in writing by the local planning authority. The measures shall be implemented and maintained in accordance with the approved details.
- 20) No vegetation removal will take place during the bird nesting season (March- August inclusive) unless a survey by a suitably qualified ecologist has confirmed the absence of nesting birds immediately prior to works commencing.

Access

- 21) No other part of the development hereby permitted shall begin until the new means of access has been sited and laid out in accordance with details pursuant to Condition 1 that shall first have been submitted to and approved in writing by the local planning authority. Thereafter, the means of access shall be retained in accordance with the approved details.
- 22) Within 3 months of the new means of access being brought into use all other existing access points not incorporated in the development hereby permitted shall be stopped up in accordance with the details to be approved pursuant to Condition 1.

Noise and ventilation

- 23) Prior to the commencement of construction of any dwelling hereby permitted, a noise scheme shall be submitted to and approved in writing by the local planning authority providing details of the window glazing and sound attenuation measures to be provided to habitable rooms to ensure bedrooms meet the good internal equivalent standard of 30dB(A) at night and prevent the exceedance of Lmax of 45dB(A) and living rooms meet an internal equivalent noise level of 35dB(A) as described in BS8233:2014. The approved scheme shall be implemented prior to the occupation of any dwelling hereby permitted and retained as such thereafter.
- 24) Prior to the commencement of construction of any dwelling hereby permitted, details of a ventilation scheme shall be submitted to and approved in writing by the local planning authority to ensure an appropriate standard of ventilation, with windows closed, is provided. The approved scheme shall be implemented prior to the occupation of any dwelling hereby permitted and retained as such thereafter.

- 25) Prior to the commencement of construction of any dwelling hereby permitted, details of a scheme for protecting those dwellings and rear or side gardens facing the A191 from noise from the A191 shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of any of those dwellings and retained as such thereafter.

Levels

- 26) Notwithstanding the details to be submitted pursuant to Condition 1, prior to the commencement of construction of any dwelling hereby permitted details of the site showing the existing and proposed ground levels and levels of thresholds and floor levels of all proposed dwellings shall be submitted to and approved in writing by the local planning authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter, the development shall be carried out and retained in accordance with the approved details.

External materials

- 27) Notwithstanding the details to be submitted pursuant to Condition 1, prior to the commencement of construction of any dwelling hereby permitted above ground level details and/or samples of all external materials and finishes to be used in the construction of those dwellings shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out and retained in accordance with the approved details and/or samples.

Drainage

- 28) None of the dwellings hereby permitted shall be occupied until sewage disposal works to serve the development hereby permitted have been provided on the site in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 29) None of the dwellings hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Travel Plan

- 30) The Travel Plan shall be implemented in accordance with the approved details and operated as such thereafter.

END OF SCHEDULE OF CONDITIONS