



Appeal Decision

Hearing held on 20 November 2019

Site visits made on 19 and 20 November 2019

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd January 2020

Appeal Ref: APP/Z4718/W/19/3232430

Land adjacent Upper Quarry Road and Bradley Road, Bradley, Huddersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr G R E Bottomley against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/60/93847/W, dated 6 November 2017, was refused by notice dated 10 January 2019.
 - The development proposed is demolition of existing dwelling and outline application for the erection of 36 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr G R E Bottomley against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline, with all matters reserved except for the access. I have dealt with the appeal on this basis, treating proposed site layout plans as illustrative, except in relation to the access.
4. Amended access plans (drawing nos 1707802d; 1905501-1 Rev A; 1905501-2 Rev A) have been submitted for consideration, showing suggested alternative options for the junction arrangement. The Council provided a written response to the additional plans at the Hearing and the appellant has had the opportunity to respond. The suggested changes are within the red line boundary and do not fundamentally change the nature of the proposal. I am, therefore, satisfied that no party's interests would be prejudiced by accepting the plans for initial consideration. I address the implications of the amended plans in my reasoning below.

Main Issues

5. The main issues in this case are:
 - The effect of the proposal on highway safety.
 - Whether the proposal would make adequate provision for affordable housing?

- Whether the proposal would make adequate provision for open space?
- Whether the proposal would make adequate provision for education?

Reasons

Highway safety

6. The appeal site consists of a vacant field and garages within an existing residential area. The site is served by an unadopted lane between numbers 32 and 34 Bradley Road which forms a junction with the A6107 Bradley Road. Bradley Road is tapered on the approach to the traffic signal-controlled junction with the A62 Leeds Road and has a footway and off-road parking lay-bys either side of the access road.
7. A single eastbound lane exists on Bradley Road immediately outside the site; however, this becomes two lanes to the east of the site's entrance and three lanes further east on the approach to the Bradley Road/Leeds Road junction.
8. The centre of Bradley Road is hatched with a series of right turning pockets including one into the existing access road. A keep clear marking is provided across Bradley Road at the entry to the access road. An eastbound on-road cycle lane on Bradley Road terminates immediately prior to the site access road.
9. Traffic flows along this section of Bradley Road are high at morning and evening peak times. Peak hour flow data provided for a planning application for another site off Bradley Road included am and pm peak hour flows on Bradley Road. In the am peak (0800-0900) there were around 1,400 two-way movements (680 eastbound and 720 westbound) and in the PM peak (1700-1800) 1,470 two-way movements (800 eastbound and 670 westbound).
10. The appellant's Transport Statement provided trip generation rates for the appeal proposal on the basis of 40 units which would generate 9 arrivals and 21 departures in the morning peak hour and 20 arrivals and 13 departures in the evening peak hour. Based on 36 units this would equate to 8 arrivals and 19 departures in the am peak and 18 arrivals and 11 departures in the pm peak. The Council does not dispute this evidence.
11. A queue survey undertaken by the appellant at the application stage shows that in any time period, of the three established approach lanes, between the site's entrance and the Bradley Road/Leeds Road junction, only one experienced queues which extended as far as 28 and 30 Bradley Road, while the queue lengths in the other two lanes were considerably shorter. However, the Council's own surveys carried out at PM peak observed vehicles queuing past the site entrance in two lanes, with vehicles frequently encroaching on to the right turn pocket, into the site access and over the central hatched area.
12. At the request of the Council the appellant subsequently undertook video surveys which shows that vehicles queued past the site access in two lanes, sometimes past the existing refuge. My own observations on my site visits confirmed this and I noted that on occasion, queues extended past the Upper Quarry Road junction at peak PM time.
13. The video survey shows that the longer lane queues in one lane past the existing pedestrian refuge and, depending on the size and position of vehicles in the queue, a slow moving but free flowing line of traffic on the inside of the queue. On

occasion, a faster moving inner lane was observed where vehicle size and position allowed.

14. The video survey also showed that the cycle lane encourages vehicles to over-run the central hatching whilst the inside lane of traffic must enter the cycle lane. However, the width of carriage way is such that vehicles only encroach into the hatching by up to a metre leaving some 2.5m or more for right turning vehicles to enter the pocket(s) and enter the site access or Upper Quarry Road and remain clear of the through traffic on the westbound carriage.
15. It was also noted that on one occasion a car overtook the two lanes of traffic to join a short queue in lane 3 by driving over one or both right turn pockets. Vehicles also on occasion encroached into the parking layby on the mouth of Upper Quarry Road to pass stationary or slower moving vehicles in the outside line of traffic. The video survey shows that only one vehicle was observed to overrun the nearside footway at the existing pedestrian refuge west of the Upper Quarry Road junction.
16. The existing access road will be reconfigured in order to provide an access with a width of 5.5m together with 2m footways to either side, facilitated by the demolition of number 32 Bradley Road. The junction onto Bradley Road would have increased radii to either side, 6m to the east and 10m to the west. The access requires the existing laybys to the northern side of the carriageway along Bradley Road to be shortened slightly. The Council has not raised concerns regarding the reconfiguration of the existing access road itself.
17. In order to improve pedestrian access to the site a pedestrian refuge is proposed west of the improved junction approximately 2m in width and 5m in length. A pedestrian build-out is also proposed to the southern side of the carriageway within the layby area to provide a pedestrian link to the existing southern footway. It is also proposed to remove the existing keep clear marking at the Upper Quarry Road junction and the site access and replace with yellow box marking and red surfacing in the cycle lane.
18. The pedestrian island west of the junction would allow a width of 5.5m for the eastbound carriageway enabling vehicles to continue to queue in two lanes and so there would not be a detrimental effect on queue length or congestion along Bradley Road. The proposed modifications to the right turn lane into the site would not affect the storage capacity of the approach lanes to the A62 signals.
19. I consider that the pedestrian refuge and build-outs would improve pedestrian crossing facilities and provide a degree of protection to right-turning vehicles. It would also help to prevent the situation of vehicles overtaking the two lanes of traffic by driving over the right turn pocket to join a short queue in lane three.
20. An independent Stage 1 Road Safety Audit identifies in table 2.2 (Problem 2) that stationary traffic regularly queues in the offside lane with free-flowing traffic in the nearside lane and that visibility for right turning vehicles will be impeded by the queue, which increases the potential for a collision with an eastbound car, motorcycle or cyclist travelling in free-flowing conditions in the nearside lane. This echoes the Council's concerns that the proposal would intensify right turning movements into the site. It considers that vehicles turning through queueing traffic into a live lane is one of the major causes of injury accidents in the area due to a lack of inter-visibility. It is also concerned about vehicles overrunning the footway.

21. Due to the proposed carriageway width, the pedestrian refuge would not prevent two lanes forming and whilst the yellow box junction would encourage drivers to leave the site access clear, it would not prevent the situation of a vehicle crossing a stationary and then live lane of traffic. Consequently, the highway safety issue identified by the Road Safety Audit would still exist.
22. The video surveys undertaken on behalf of the appellant show that most people arriving at Upper Quarry Road do so from the southwest and turn left into the access to the appeal site. In the AM peak hour only 20% of arrivals turned right into Upper Quarry Road whilst in the PM peak (1700-1800) the proportion was 17.6%. It also showed that the level of right-turn movements into Upper Quarry Road from Bradley Road varied but averaged around 8 movements per hour (which serves 39 dwellings). This survey work provided information regarding the distribution of traffic which was then applied to the predicted flows for the proposed development.
23. Applying the same distribution to the predicted traffic arising from the appeal proposal right turn movements into the site would increase by 2 and 3 vehicle movements in the AM and PM peak hours respectively, equating to one movement every 20 minutes. The appeal proposal would result in an additional 6 arrivals and 14 departures in AM peak and 13 arrivals and 8 departures in PM peak over and above the consented development. The net increase in right turning movements into the site access above the level which the Council has already accepted equates to an additional 1 to 2 movements per peak hour.
24. Attention is drawn to the appellant's video survey which shows that the queue on the approach to the traffic signals only extends beyond the proposed access to the appeal site for just over a fifth of the peak hours surveyed. The potential situation where a vehicle would be turning right across a stationary lane and live lane would not, therefore, occur for the majority of the peak period (almost 80%) or for the rest of the day when vehicles pass through the junction free flowing. The appellant, therefore, considers that the increase in traffic and right-turn movements is insignificant and that the effect on highway safety is not considered to be material.
25. Whilst I acknowledge the appellant's evidence; there would, nevertheless, be an increase in right turn movements with limited visibility which would increase the risk of collisions. The extent to which the increased risk is materially significant depends upon the severity of the risk and the context of the existing road conditions.
26. The Council draws attention to a number of junctions in the area which it considers demonstrates the danger of vehicles turning right through either slow moving or standing traffic resulting in injury. Whilst those cases serve to demonstrate the danger of right-turn movements, they do not appear to be directly comparable to the appeal proposal in terms of volume of traffic, road layout etc.
27. As agreed by the parties at the hearing the most directly comparable junction in terms of road layout and volume of traffic is the Upper Quarry Road with Bradley Road junction which serves a similar number of dwellings (39) to the appeal proposal. An accident occurred when a motorcyclist was hit by a vehicle turning right through a queue across the live lane occupied by the motorcyclist. The appellant considers that one accident in 7 years does not indicate a road safety problem of any significance and that based on the video evidence, drivers using the junction appear to adapt safely to the situation of queuing traffic.

28. Attention is also drawn to the fact that there are no records of any serious accidents at the access to the appeal site in the last 10 years. Whilst this may be the case, the existing access only serves a few dwellings and some free-standing garages and so the use is relatively limited. Although there are no records of any serious accidents evidence was presented at the hearing by local residents of minor incidents which have not been reported.
29. I acknowledge that the accident rate at Upper Quarry Road is low and that the junction serves a similar number of properties. Nevertheless, the appeal site access is closer to the main Bradley Road/Leeds Road junction than the Upper Quarry Road junction. When vehicles queue past the site access in two lanes during peak hours I noted on my site visit the inner lane of traffic can flow quickly depending on the sequence of the traffic lights at the junction. Furthermore, I noted that vehicles speed up on the inner lane in order to get through the traffic lights whilst on green. Consequently, due to the proximity to the main junction, I consider that the risk associated with right-turn movements at the appeal site is greater than at the Upper Quarry Road junction.
30. The appellant has prepared a designer's response to the issues raised in the Road Safety Audit and some of those issues have been addressed by way of measures set out in a revised plan (ref: 1707802d). These include amongst other things: the relocation of an Advance Directional Sign in order to ensure drivers select the right lane in the approach to the junction; and adjustments to the existing and proposed tapers to the layby.
31. The proposed yellow box junction may provide vehicles with the opportunity to turn right whilst both lanes of traffic are stationary; however, it would not address the issue of vehicles turning right across a stationary lane of traffic whilst the inner lane of traffic is moving and reduced visibility. Furthermore, although the red surfacing would draw attention to the cycle lane itself; it would not improve driver's visibility of approaching cyclists. Consequently, I do not consider that the mitigation measures put forward in Plan No 1707802d would address highway safety concerns identified in the Road Safety Audit to an acceptable degree.
32. In response to the Road Safety Audit, the appellant has prepared an alternative scheme (1905501- Rev A and 1905501-2 Rev A, described as Option 2) which physically narrows the carriageway at the pedestrian refuge to force drivers to use the road as a single line of traffic. However, as highlighted by the Road Safety Audit, this would not prevent two lanes of traffic forming immediately east of the refuge island, across the junction bell mouth and so option 2 would not satisfactorily address the highway safety risk either. The Road Safety Audit recommends that the eastbound lane is physically restricted to a single lane opposite the bell mouth of the junction. However, as set out in the designer's response, any physical measure to prevent two lanes forming would also prevent right turn movements.
33. Furthermore, the reduction of the carriageway to single width at the pedestrian refuge would have the potential to increase congestion in the approach to the junction. The potential effects on the free-flow of traffic have not been assessed and, therefore, I am unable to take into account Plans numbered 1905501- Rev A and 1905501-2 Rev A in my Decision.
34. The Council confirmed at the hearing that the positioning of bollards on the pavement at both the proposed and existing refuge would discourage overrunning

of the footway and address their concerns in this respect. These could have been secured by condition, had I decided to allow the appeal.

35. Paragraph 108 of the Framework states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that, amongst other things, a safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network (in terms of capacity and congestion), or highway safety, can be cost effectively mitigated to an acceptable degree.
36. Paragraph 109 goes on to state that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.
37. Whilst the unofficial two-lane queueing along Bradley Road in the proximity of the appeal site access is not ideal and should not be condoned, my consideration must be undertaken within the context of the road conditions present at the time of my decision. Even considering the fall-back position, within the context of the existing difficult road conditions and proximity to the junction, the increased risk would, in my view, be materially significant.
38. The fact remains that the highway safety issue identified in the Road Safety Audit would not be satisfactorily mitigated. Traffic turning right into the site access would have limited visibility due to the stationary queue of traffic and would have to cross a live lane of traffic which can be fast flowing which would in my view increase the risk of serious accidents occurring. Motorcyclists and cyclists would be at particular risk due to their small size and limited visibility. The proposal would, therefore, result in an unacceptable increased risk of collision to the detriment of highway safety.
39. Consequently, for the reasons stated above, the proposal would not be able to achieve a safe and suitable access and would have an unacceptable impact on highway safety. It would, therefore, conflict with Policy LP21 which requires that, amongst other things, proposals can be accessed effectively and safely by all users. Conflict also arises with paragraphs 108 and 109 of the Framework.

Provision of affordable housing

40. The Kirklees Strategic Housing Market Assessment 2016 (the SHMA) identifies a pressing need for affordable housing in the Borough. In the Huddersfield North Sub-area, there is a need for 3-bedroom (or larger) houses and a less but still substantial need for one- and two-bedroom homes. The sub-area has one of the lowest rates of ownership in Kirklees (at just over 60%).
41. Policy LP11 of the Local Plan seeks to ensure that proposals for housing provide a mix (size and tenure) of housing. It states that the Council will negotiate with developers for the inclusion of an element of affordable homes in planning applications for housing developments of more than 10 homes. The proportion of affordable homes should be 20% of the total units on market housing sites. It goes on to say that the proportion may be less where viability evidence demonstrates that there are development costs which would otherwise prejudice the implementation of the proposal. The preference is for affordable homes to be provided on site but where justified a financial contribution of at least equal value may be accepted to provide affordable homes elsewhere or to re-use or improve housing stock.

42. The supporting text to Policy LP11 at paragraph 8.38 states that negotiation will take place on individual planning applications if viability information is provided to show that the level of affordable homes required cannot be delivered.
43. In light of the pressing need for affordable housing a contribution would normally be required to make the development acceptable in planning terms. The contribution is calculated at equal value to that of on-site provision in order to enable provision elsewhere and would, therefore, be directly related and fairly and reasonably related in scale and kind to the development. Consequently, I consider that the requested affordable housing contribution would meet the tests set out at Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 and the Framework.
44. In order to meet the requirements of Policy LP11, seven of the 36 units proposed would need to be provided as affordable housing. No affordable housing is proposed, either on or off-site by the appellant. Furthermore, there is no mechanism before me such as a Section 106 obligation by which to secure an off-site contribution.
45. The appellant has undertaken a Viability Appraisal which concludes that with or without Section 106 obligations relating to affordable housing, open space and education contributions, a negative site value is arrived at and that the proposed development is not viable. The appellant attributes the negative site value to depressed and stagnant house prices in the area as a major reason for the proposed development being unviable.
46. The Council appointed independent viability consultants who have reviewed the viability evidence and have undertaken a further assessment using the appellant's and their own figures and allowances. They also conclude that the proposed development is not viable, would not deliver an acceptable level of profit to a potential developer and that the development of the site cannot meet any affordable housing requirements nor any other planning obligations and be viable. It is not, therefore, in dispute that the proposal would not be viable either with or without affordable housing or other contributions. From everything which I have seen in submissions, there is no reason to disagree.
47. In the absence of affordable housing provision, the Council's position is that known housing need would not be met and that the proposal would be contrary to Policy LP11.
48. Policy LP11 includes a viability clause as an integral part of the policy; however, I agree with the Council that the wording of the Policy does not necessarily compel the decision maker to accept a lower proportion of affordable housing. Nevertheless, the presence of the viability clause, as recognised by the Inspector who considered the Local Plan at paragraph 74 of her report, provides flexibility to deal with cases where viability is an issue.
49. Paragraph 57 of the Framework states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.
50. It goes on to say that *"the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including*

whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force". The site is not allocated in the Plan and so was not appraised on an individual basis in the Local Plan Viability Study¹. The Viability Appraisal presented by the appellant has been assessed by independent consultants on behalf of the Council who agree with its conclusions. On the basis of evidence in submissions and at the hearing, and in light of the independent verification of the report, I consider that the Viability Appraisal can be given significant weight in my Decision.

51. The Local Plan Inspector states that the affordable housing shortage would be met through the provision of more than 250 affordable homes per year from outstanding permissions and new allocations. I also note that the affordable housing trajectory (figure 8) of the Local Plan includes completions, commitments and local plan allocations but not windfalls. This would seem to imply that the affordable housing requirement could be met from those sources. On this basis, the harm arising from the lack of 7 affordable units on this site would be limited and would not jeopardise the ability of the Council to meet its overall affordable housing target.
52. The viability clause in Policy LP11 enables flexibility to the decision maker to agree the provision of less affordable housing than the requirement of 20% and in my view the term 'less' would include no provision. Consequently, and in the particular circumstances of this case, I consider that whilst not making provision for affordable housing, the proposal would not be in conflict with Policy LP11.

Open space

53. Policy LP63 of the Local Plan states that new housing developments will be required to provide or contribute towards new open space or the improvement of existing provision in the area, unless the developer clearly demonstrates that it is not financially viable for the development proposal. New open space should be provided in accordance with the Council's local open space standards or national standards where relevant. In areas where existing open space provision is insufficient to meet local needs, provision of new open space on-site would be preferred to meet the needs of development. Where it is not viable the expansion or improvement of existing open space provision in the area will be sought.
54. The District wide open space provision standards are set out at Table 12 of the Local Plan. Based on these standards, a contribution toward natural/semi-natural greenspace and allotments within Ashbrow Ward is not required as the quantity standard has been met. Either on-site provision of parks and recreation (19.44 m² per dwellings) or an off-site contribution is required as the quantity standard in Ashbrow Ward has not been met. The Council indicates that a contribution towards the improvement of the nearby Oak Road Recreation Ground could be provided. The Recreation Ground is close to the site and would, therefore, be used by residents of the scheme.
55. The quality standard for amenity greenspace has not been met and so the provision of new amenity space equating to 14.58 m² per dwelling would be required. As the quantity standard has been met and whilst a contribution to off-site provision could be secured, on-site provision would help to achieve a well-designed scheme and meet the needs of residents in accordance with the fifth paragraph of Policy LP63. Children's equipped designated play areas provision

¹ Local Plan and Community Infrastructure Levy Viability Study 2015 and subsequent updates (Cushman and Wakefield)

should be provided at 0.25 hectares per 1000 population, equivalent to 6.1 m² per dwelling. This would equate to a requirement for 219 m² for 36 dwellings. Provision for young people would be 7.3 m² per dwelling resulting in a requirement for 262 m² per dwelling. Overall, children and young people provision would equate to around 482 m².

56. Whilst the appellant challenges the Council's request for contributions towards some typologies, the proposal would include 36 dwellings some of which would be family housing and so would generate demand for open space facilities. Provision is required where there is a quantitative or qualitative deficiency. Consequently, open space provision in the typologies referred to above either on-site or a contribution would normally be required to make the development acceptable in planning terms.
57. The physical requirement has been worked out based on standards contained in an up-to-date plan and the Open Space study which informed the plan in terms of quantity and quality standards and deficiencies. The requirement in square metres has then been translated into a financial contribution on the basis of the cost of providing equivalent provision 'on the ground'. The formula for calculating the financial contribution includes a 15% administration fee and it is not clear how this has been determined; however, I would have requested further information on this matter, had I decided to allow the appeal.
58. Overall, I consider that the requirement has been worked out on a proportionate basis on up-to-date standards in the Local Plan and would, therefore, be fairly and reasonably related in scale and kind to the development. Consequently, the requested open space requirement and contribution would meet the tests set out in Regulation 122 of the CIL Regulations and the Framework.
59. The proposal does not currently propose any on-site open space provision nor is it proposing a contribution to off-site provision. However, the Policy clearly states that new housing developments will be required to make provision *unless* the developer clearly demonstrates that it is not financially viable for the development proposal (my emphasis). The policy, therefore, provides sufficient flexibility to take financial viability into account. As explained above, I give significant weight to the Viability Appraisal in my Decision.
60. At the hearing, the appellant indicated that they would be willing to consider a planning condition to provide open space on-site and indeed some amenity space provision would be required in order to provide an attractive development. It is not clear whether all the typologies required could be provided on-site; however, I would have gone back to parties for clarification, had I decided to allow the appeal. Consequently, there would have been potential to include some open space as part of the proposal had I decided to allow the appeal. Due to the presence of the viability clause, I do not consider that the proposal would conflict with Policy LP63 of the Local Plan.

Education

61. Policy LP49 states that where the scale of development proposed may impact on education and health provision, the Council will actively work with applicants to resolve key planning issues in advance of a planning application being submitted.
62. It goes on to say that the need for the provision of additional school places will be a material consideration when proposals for new housing development are

considered. Developers should work with the Council at the earliest opportunity to ensure the phasing of development and appropriate mitigation is identified in a timely manner to ensure education provision can be secured.

63. The Policy is consistent with paragraph 94 of the Framework which highlights the importance of providing a sufficient choice of school places to meet the needs of existing and new communities. Local Planning Authorities should take a proactive approach to meeting this requirement and should give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.
64. The Council's Providing for Education Needs Generated by New Housing provides further details on how the Council calculates contributions for education needs generated by new housing. The Council clarified at the hearing that the document is not Supplementary Planning Guidance but has been adopted by the Council. It is based on detailed research and forms a consistent and transparent basis for calculating contributions towards education provision.
65. Paragraph 3.1 states that in any proposal of 25 dwellings or more the need for educational contributions will be a material consideration. Contributions will only be sought where the new housing will generate a need which cannot be met by existing local facilities. Provision at these schools will be assessed to determine whether there is or will be sufficient capacity to accommodate the extra pupils that the proposed development would generate. The basis of this will be the school's number on roll data, forecasts of pupil numbers at relevant schools and the Net Capacity of school which is a measure of the accommodation capacity of schools. The LA's forecasts of additional pupils from new dwellings are based on the assumption that an additional 3 children per 100 houses per year group will be generated for primary and 2 for secondary.
66. Where the number of children generated by the development would increase the numbers on roll (NOR) over the net capacity, a financial contribution would be sought for each child over the net capacity. This would apply if forecast numbers on roll show a deficit of school places resulting from the additional children generated from the new housing. The basis of calculating a contribution will be the DCSF cost multiplier. The present cost multipliers for Kirklees are £11,767 per primary pupil and 17,730 per secondary pupil.
67. The Primary Admission Area Primary School is identified as St Thomas CE (VC) Primary School. On the basis of 3 children per 100 houses per year group, the development would generate an additional 5.4 school places. At the time which the housing units will be occupied (19/20) there would be a surplus of 2 places, hence 3.4 extra places would be required. On the basis of the DCSF cost multiplier (£11, 767) the contribution for 3.4 places would be £40,008 towards primary school provision. As the North Huddersfield Trust Secondary School has surplus spaces and no contribution to secondary school education is required.
68. Any family housing would generate additional pupils which would place pressure on existing education provision. Furthermore, it has been demonstrated that a shortfall in primary provision would arise as a result of the proposal at the Primary Admission Area Primary School at the time which the housing units would be occupied. The contribution would, therefore, be necessary to ensure that the development meets the needs of its residents and to make the development acceptable in planning terms. Furthermore, the contribution has been calculated on the basis of the DCSF cost multiplier and is, therefore, fairly and reasonably

related in scale and kind to the development, having regard to local provision already available. Consequently, I consider that notwithstanding viability issues, the requested contribution meets the tests set out at CIL Regulation 123 and the Framework.

69. Whilst a specific project has not been identified the Council confirmed at the hearing that it has a system of monitoring to ensure that contributions secured are directly related to the development in question. CIL Regulation 123 regarding the pooling of contributions is no longer relevant. Whilst I note the appellant's comments regarding the emerging Community Infrastructure Levy for the District, this has not yet been adopted.
70. The appellant has challenged the proposed contribution on the basis of a document 'Securing Sufficient High Quality Learning and Childcare Places'² which states that for the Huddersfield North area the trend in the number of children living in this planning area per year group towards 2021 is broadly static. However, unlike some other areas it does not say that there is no immediate need for additional places. Furthermore, this is a summary at the planning area level; whilst the Council's calculations are based on a detailed assessment of the Primary Admission Area Primary School.
71. Attention is drawn to the proposal to develop over 2000 houses at Bradley Park Golf Club where it is intended to provide new primary schools for the area. However, I note that no planning permission is in place for the school, and the Bradley Park site is significantly further away from the appeal site than St Thomas CE (VC) Primary School. Furthermore, the need for this additional school presumably arises at least in part from the proposed development for 2000 houses.
72. Policy LP4 relating to infrastructure provision states that new development should contribute to the provision of infrastructure, taking account of local and strategic needs and financial viability. Whilst Policy LP49 does not contain a viability clause, the plan must be read as a whole and in my view Policy LP4 provides the flexibility to take viability into account.
73. As discussed above I consider that significant weight can be attached to the Viability Appraisal in my decision. Consequently, whilst the proposal would not make provision for education, taking account of the viability appraisal, and in the particular circumstances of this case, I conclude that the proposal would not be in conflict with Policy LP49 or LP4.

Other Matters

74. Consultation has been undertaken on three options for a proposed relief road, all of which cross the site. The proposed relief road is at an early stage of the consultation process and the Council has confirmed that it is not a material consideration in this case; and I agree.
75. The Council has suggested a condition relating to metro cards and bus stop improvements. I have not considered the suggested conditions in detail as I have decided not to allow the appeal.

² Securing Sufficient High Quality Learning and Childcare Places, School Organisation, Planning and Development for 2018-2021' Kirklees Council

Planning Balance and Conclusion

76. The proposal would not make provision for affordable housing, education or the full extent of open space; however, Policies LP11, LP63, and LP49, taken together with Policy LP4 provide sufficient flexibility to deal with situations where flexibility is an issue. I attribute significant weight to the Viability Appraisal and so in the particular circumstances of this case, the proposal would not be in conflict with those policies. However, I have found that the proposal would cause harm to highway safety and conflict with Policy LP21. The conflict with Policy LP21 carries significant weight against the appeal and I consider that the proposal conflicts with the development plan as a whole.
77. The Council adopted its Local Plan in February 2019 and there is now a five-year supply of housing land. Paragraph 12 of the Framework states that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.
78. The proposal would have the potential to deliver market housing – which the Framework seeks to boost significantly – in an accessible location. The proposal would also have the potential to benefit the local economy by generating jobs during the construction phase and through resident spend in the longer term. The economic benefits would be generic and would arise with any development. There would also be some environmental benefits in the utilisation of a partial previously developed site and potential for a biodiversity net gain. Whilst I acknowledge that granting planning permission would provide at least some chance of development being delivered on the site along with the associated benefits, due to the uncertainty of the development coming forward, I can only attach moderate weight to these benefits in my Decision.
79. The considerations in favour of the development collectively carry moderate weight, but not sufficient in my view to overcome the harm to highway safety or the statutory presumption in favour of the development plan. The harm to highway safety and the conflict with Policy LP21, justifies a decision to refuse planning permission in this case.
80. For the reason stated, and with regard to all other matters raised, I conclude that the appeal should be dismissed.

Caroline Mulloy

Inspector

APPEARANCES

For the Local Planning Authority

Victor Grayson	BA (Hons) MTP MAUD, Development Management Masterplanner
Louise Hewlett	MEng, Principle Engineer, Traffic Signals
Joe Walker	HNC, Principal Engineer, Highways Safety
Ryan Kinder	HNC, Principal Engineer, Highways Development Management

For the Appellant

Mr Nicholas Willock	BSc (Hons), MA (Town and Regional Planning), MRTPI, MRICS
Mr Eric Appleton	B Eng. (Hons), DMS, C Eng. MICE, MCIHT

Interested Persons

Jane Walker	Resident
Carol Wright	Resident, Upper Quarry Road

HEARING DOCUMENTS

Documents submitted on behalf of the Council

Providing for Education needs Generated by New Housing
Further highways response of the LPA 20/11/19

Documents submitted on behalf of the Appellant

Extract from Manual for Streets
Appellant's note entitled 'Other matters' dated 19/11/19v
Appellant's note to Inspector dated 19/11/19
Costs Application
Response to new evidence received 19/11/19 (incl Kirklees Local Plan and CIL Viability Addendum (2016))