The Planning Inspectorate

# Appeal Decision

Site visit made on 17 July 2020

**by M L Milliken BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 August 2020**

**Appeal Ref: APP/P2935/W/19/3235782**
**Land/field west of Westacres estate, Wark (Easting 385783, Northing 577136).**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Wark Estates Ltd against Northumberland County Council.
- The application Ref 19/01097/FUL, is dated 29 March 2019.
- The development proposed is construction of nine new build dwellings along with associated highways access, vehicle parking and landscaping.

## Decision

1. The appeal is dismissed and planning permission is refused.

## Procedural Matter

2. The appeal before me has been presented as an appeal against non-determination. There is some dispute between the parties regarding the date the appeal was submitted and deemed to be valid and I note correspondence in that regard. I also note references made by the Council with regards to determination of the application and the provision of the planning officer's delegated report, which sets out the Council's case and reasons for refusal. From the evidence before me, I am satisfied that the appeal was lodged and deemed valid on the basis of non-determination and I am therefore proceeding on that basis. I am treating the Council's report as presenting their putative reasons for refusal had the application been formally determined and a decision notice issued.

## Application for costs

3. An application for costs was made by Wark Estates Ltd against Northumberland County Council. This application is the subject of a separate Decision.

## Main Issues

4. The main issues are:

(i) Whether or not the proposed development would occupy an appropriate location for new dwellings, with specific regard to the Development Plan and the National Planning Policy Framework (the Framework);

(ii) The effect of the proposed development on the character and appearance of the surrounding area and countryside;

(iii) The effect of the proposed development on nearby protected species; and

(iv) Whether or not the proposed development would provide an appropriate contribution to housing need by virtue of the level of affordable housing to be provided.

## Reasons

*Location of proposed development*

5. The appeal site comprises greenfield land adjacent to the existing residential development of Westacres, to the edge of the village of Wark, Northumberland. By virtue of its edge of settlement location, the site is surrounded by existing built development within Wark, scattered dwellings, farmsteads and open countryside.

6. The appellant asserts that the proposed development is not located in the open countryside but adjacent to the existing village, which has no formally defined settlement boundary. Whilst it is accepted that the appeal site is located adjacent to existing built development, it is noted that the supporting text of adopted Policy GD1 of the Tynedale LDF Core Strategy (TLDFCS) (adopted October 2007) states that the open countryside is defined as everywhere outside of the built up area of a town or village, including sporadic groups of buildings. The main policy text of Policy GD1 states that, in the open countryside, development will be limited to the re-use of existing buildings. As the proposal is for new dwellings, I therefore find conflict in this regard.

7. Adopted Policy H1 of the TLDFCS (2007) sets out the principles for housing. The proposed development appears to be well-designed and would provide a choice of housing to meet local need, including bungalows. As such, it would accord with some of the principles set out in this policy. By virtue of its location however, the proposed development would not be sited in a main town, local centre or smaller village but in the open countryside, and as such it would also conflict with some of the locational principles of the policy, as set out.

8. Adopted Policy H3 of the TLDFCS (2007) sets out the need for smaller villages to have adequate services and public transport connections to support new housing. From the evidence before me I have no reason to dispute that the village of Wark has adequate services and transport connections, however the proposed development would not be located within the village but in the open countryside, on land adjacent to the village. It is considered therefore that the proposed development would not accord with adopted Policy H3, as it would not be located within the settlement, as per the thrust of the policy.

9. For the reasons set out, I consider that the proposed development would not occupy an appropriate location for new dwellings and would conflict with adopted Policies GD1, H1 and H3 of the TLDFCS (2007).

*Character and Appearance*

10. The local area is characterised by a mix of some scattered dwellings, farmsteads, the settlement of Wark and open countryside. The proposed development would be located adjacent to the existing settlement and an existing housing development known as Westacres, which contains single and

two storey properties. Westacres is separated from the appeal site by an existing vegetated boundary.

11. The proposal comprises up to 9 dwellings, with access taken from the existing highway, together with vehicle parking, landscaping and a SuDS basin. It is noted from the proposed plans that the site access would be taken from the existing highway and that a SuDS basin would be located to the boundary with the Westacres development, with a single two storey dwelling and three bungalows beyond.

12. It is considered that the proposed separation distances and location of these properties is respectful of the existing Westacres development, particularly with regard to scale and massing. The proposed development would also include the use of sympathetic materials, areas of green space and generous plot sizes, resulting in a low density scheme that would relate well in design terms to the existing development of Westacres, and other scattered dwellings in the vicinity.

13. In this way, the proposed development would not conflict with saved Policies GD2 and H32 of the Tynedale District Local Plan (TDLP) (2007 as saved), which relate to the design of new residential developments. For the same reasons I also find no conflict with adopted Policy BE1 of the TLDFCS (2007), which outlines principles for the built environment.

14. The remainder of the appeal site would contain a mix of two storey dwellings and bungalows. By virtue of its location outside the existing settlement, combined with local topography, it is considered that some elevated views of the appeal site would occur, particularly when approaching the site from the west. Adopted Policy NE1 of the TLDFCS (2007) relates to, in part, the avoidance of the urbanisation of the countryside and the protection and enhancement of the character and quality of the landscape.

15. Although the appeal site is not subject to a specific landscape or other environmental designation, it is considered that the proposed development conflicts with this policy as it would result in built development in the open countryside, which currently forms part of the setting of Wark village. Whilst the appellant's comments regarding rounding off of the settlement are noted, it is not considered that the proposed site boundary would effectively constitute a rounding off of the existing settlement, but that the development would extend into part of an existing field, thereby creating a new, albeit modest, edge of settlement form.

16. The proposed development would relate well in terms of design to adjacent built development, including Westacres. I therefore find no harm or conflict in relation to saved Policies GD2 and H32 of the TDLP (2007 as saved) and Policy BE1 of the TLDFCS (2007), which relate to the design of new residential developments and built environment principles. The proposed development would not be located within a settlement but in the open countryside. On balance and for the reasons given, it is considered that the proposed development would have an adverse effect on the character and appearance of the surrounding countryside and the setting of Wark village, and would therefore conflict with adopted Policy NE1 of the TLDFCS (2007), which seeks to protect the character and quality of the landscape.

*Protected Species*

17. I have considered the evidence in relation to protected species within the vicinity of the site, including species and habitat along the Dean Burn and principally in relation to the effect of the proposal on white clawed crayfish and European protected coded species (freshwater pearl mussel). From review of the ongoing correspondence between the parties on the matter, it is clear that there are outstanding concerns and objections from both the Environment Agency (EA) and the Council's ecology officer.

18. I note from the evidence that the appellant has attempted to overcome the outstanding concerns, including through submission of a revised surface water management scheme and associated documents to the Council via email dated 15th November 2019, however these documents have not been subject to the appropriate consultation and therefore cannot be taken into account in the determination of this appeal.

19. On balance, it is considered that, at present, there is inadequate information before me to safely determine that there would be no adverse effect or unacceptable harm to protected species as a result of the proposed development. I therefore consider that the proposal is contrary to saved Policies NE27, NE33 and NE37 of the TDLP (2007 as saved), which relate to, in part, ensuring no adverse effects on nature conservation, protected species and habitats. For the same reason, the proposed development would also conflict with adopted Policy NE1 of the TLDFCS (2007), which seeks to protect and enhance biodiversity.

*Affordable Housing*

20. From the evidence before me and with reference to adopted Policies H7 and H8 of the TLDFCS (2007), it is considered that there is a clear policy requirement for affordable housing to be provided through the proposed development, at a rate of between 30-50%.

21. I note the Council's assessment regarding the reduced need for affordable housing compared with the outstanding policy requirement, and that the appellant has contested the need to provide more than one affordable housing unit. The proposed provision would not accord with that required by development plan policy or would otherwise be acceptable to the Council, on the basis of a reduced rate of provision.

22. Notwithstanding the above, whilst I note references to a Section 106 agreement in the appellant's statement and to a forthcoming Unilateral Undertaking in the appellant's final comments, I have not been provided with a copy of either document. I therefore cannot take the provision of one affordable housing unit, as proposed by the appellant, into account in the determination of this appeal, as there is no effective means of it being secured or provided.

23. The proposed development would therefore fail to provide an appropriate contribution to housing need, by virtue of the level of affordable housing to be provided and would conflict with adopted Policies H7 and H8 of the TLDFCS (2007), which relate to affordable housing provision.

## Other Matters

*Emerging Plan Status*

24. Both parties reference the emerging Northumberland Local Plan (NLP) in their evidence, principally in relation to the proposed settlement boundary for Wark village. It is clear from the evidence however that the emerging NLP is at the Regulation 19 consultation stage of plan-making and that some outstanding objections exist, particularly with regard to proposed settlement boundaries. Therefore whilst I have had regard to the emerging NLP policies presented by both parties in coming to my decision, the policies presented do not affect my starting position in determining the appeal in accordance with the adopted development plan policies as presented, given that I have found that the adopted development plan policies are consistent with the National Planning Policy Framework (the Framework).

*Housing Land Supply*

25. I note the appellant's comments regarding the Council's housing land supply position. I also note the Council's calculations and evidence in this regard, including the Northumberland Strategic Housing Land Availability Assessment (September 2019) document and the Housing Delivery Test result record for Northumberland County Council.

26. Based on the evidence before me, I am satisfied that the Council appear to be able to demonstrate a housing land supply equivalent in excess of five years. Notwithstanding this, even if the appellant's comments regarding housing land supply are correct and paragraph 11d of the Framework is triggered it is my judgement that, with reference to the proposed development, the harm I have found in relation to the main issues would not be significantly and demonstrably outweighed by the benefits in this case.

27. I accept that the proposed development would provide a modest number of dwellings to meet local need and which would also contribute positively towards the overarching Government agenda of boosting housing supply. This factor is considered to be a benefit in support of the appeal, albeit the weight is somewhat tempered by the Council's latest figures as presented in evidence, cited as the equivalent of 11.2 years housing land supply.

*Other considerations*

28. The appellant has drawn my attention to a number of planning permissions granted by the Council on land elsewhere in Northumberland for residential development. Whilst I note similarities between the developments in question and the appeal proposal, they cannot be directly compared, by virtue of factors specific to the schemes in question, including the technical matters in dispute and the fact that some of the permissions were granted during a period when the Council were unable to demonstrate an adequate housing land supply. I therefore attribute limited weight to the examples provided in the determination of this appeal.

29. The appellant has also drawn my attention to a recent planning permission granted elsewhere in Wark. From the evidence before me it is clear that, although the permission in question relates to residential development, the site is subject to different specific characteristics, including its relationship with surrounding land uses. In addition, and with reference to the reasoning

provided, I have found that the appeal proposal conflicts with the development plan as a whole. I therefore give the referenced decision limited weight in the determination of this appeal.

30. I note the appellant's evidence regarding the formal pre-application advice received from the Council, including favourable comments regarding the principle of the development. Whilst I understand the appellant's frustrations in this regard, pre-application advice is not legally binding and does not prejudice determination of a planning application. It is therefore not a matter for consideration further in the determination of this appeal.

31. I acknowledge reference made to saved Policy NE34 of the TDLP (2007 as saved) in the Planning Officer's delegated report, however from the evidence before me I find no conflict with this policy, which seeks to ensure the protection of trees, and since the Council have also not found harm in this regard I therefore have no reason to assume otherwise.

32. Reference is also made to saved Policy BE22 of the TDLP (2007 as saved) in the Planning Officer's delegated report and the presence of listed buildings within proximity to the appeal site. However, from the evidence before me and my site inspection, I do not consider that the proposed development would fail to preserve or enhance the assets identified, and since the Council have also not found harm in this regard, I have no reason to assume otherwise. I therefore consider that the proposed development would not conflict with saved Policy BE22 of the TDLP (2007 as saved), which seeks to ensure the protection of listed buildings.

**Conclusion**

33. For the reasons given and with reference to the development plan as a whole, the appeal is dismissed and planning permission is refused.

*ML Milliken*

INSPECTOR