



Appeal Decision

Site visit made on 4 September 2020

by M L Milliken BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st October 2020

Appeal Ref: APP/X1355/W/20/3251696

Land east of Castledene Road, Consett

- 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 Chan Commercial Limited against the decision of Durham County Council.
 - The application Ref DM/17/02333/OUT, dated 12 July 2017, was refused by notice dated 1 November 2019.
 - The development proposed was originally described as 'outline planning application with all matters reserved (except access) for up to 142 dwellings including associated infrastructure and open space'.
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Decision

1. The appeal is allowed and outline planning permission granted with all matters reserved (except access) for up to 105 dwellings including associated infrastructure and open space provision at Land east of Castledene Road, Consett, in accordance with the terms of the application Ref DM/17/02333/OUT dated 12 July 2017, subject to the Conditions set out in the accompanying Schedule.

Procedural Matters

2. The appeal relates to an application for planning permission in outline, with all matters reserved except for access. With the exception of drawing no. CAD01/Ind01 Site Location Plan and drawing no. 1640.03.01 Rev D Sketch Housing Layout, other plans that accompany the application are illustrative only.
3. I have received confirmation from both parties that drawing no. 1640.03.01 Rev D Sketch Housing Layout formed part of the submission and contains access details that are subject to the submission of this appeal. I am therefore proceeding to determine the appeal on that basis.
4. Notwithstanding the description of development in the banner, which was taken from the application form as submitted, it is clear from the evidence before me that, during the determination process, the proposal was revised to comprise up to 105 dwellings and was subsequently publicised and determined by the Council on that basis. This amendment is also reflected in the Council's decision and is the basis upon which I determine this appeal.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the local area, with particular regard to the potential for the coalescence of the existing residential areas of Delves Lane and Crookhall.

Reasons

6. The appeal site comprises a grassed field, currently used as informal open space and is situated adjacent to existing residential development off Castledene Road, locally known as Delves Lane. The appeal site is not subject to any landscape, ecological or heritage designations.
7. Due to local topography, the site slopes away from the existing built form, towards open fields beyond. Characteristic residential development within Delves Lane generally comprises traditional, two-storey dwellings of brick construction, some with associated garage courts. Bungalows are present within the area of Crookhall.
8. The proposed development, if allowed, would result in the site being developed for up to 105 dwellings, together with open space and associated works, including a SuDS basin. Access would be taken from Gloucester Road.
9. Notwithstanding that the proposal relates to planning permission in outline, it is clear from the supporting technical information before me that the proposal would not have an unacceptable adverse effect on the natural or built environment. I also note that there are no technical objections from statutory consultees in this regard. Policy GDP1 of the Derwentside District Local Plan (DDLDP) (adopted 1997) sets out the criteria for new development, including with regard to the effect on the natural and built environment. Although this policy is in excess of 20 years old, it is considered to be generally consistent with the relevant principles as set out within the National Planning Policy Framework (the Framework). Overall, I consider that the proposed development would accord with this policy.
10. I note the independent Landscape Assessment provided by the appellant in evidence. Whilst the proposed development would result in some physical change to the overall character of the local landscape in terms of new built form, on the basis of the indicative layout it is considered that the proposed amount of development would be appropriate, taking into account local topography and other surrounding built form within the local area. Whilst details regarding landscaping are yet to be agreed, there is nothing before me to suggest that the development of up to 105 dwellings would otherwise be unacceptable in this regard.
11. The Council cite saved Policies EN1 and EN2 of the DDLDP (1997) in their reason for refusal, which relate to development in the countryside and the prevention of urban sprawl respectively. It is noted however that both the committee report and the appellant's evidence consider these policies to be out-of-date and call for paragraph 11d of the Framework to be engaged. Notwithstanding this, I consider that the overall thrust of policies EN1 and EN2 accord with relevant principles contained within the Framework, notably paragraphs 127 and 170 respectively, and in particular the need to ensure that developments are sympathetic to local character.

12. Due to the linear nature of the site, running parallel to the existing built form, the proposed development would be read as an extension to Delves Lane, rather than appearing to encroach into the surrounding undeveloped landscape. Although some long views of the site would occur, it is not considered that the overall effect on the character and appearance of the local area would be adverse, particularly when read in the context of existing residential development within the vicinity.
13. Overall, the scale of development proposed and the continuing presence of open landscape beyond the appeal site would result in residential development that would relate well to the existing pattern of development. Although it is accepted that a proportion of the site boundary would effectively abut existing development within Crookhall, it is not considered that such a modest connection would read as the coalescence of the existing residential areas.
14. In conclusion, I consider that the proposed development would accord with saved Policies GDP1, EN1 and EN2 of the DDLP (1997), for the reasons given. For the same reasons, I also consider that the proposed development would accord with paragraphs 127 and 170 of the Framework.

Other Matters

15. It has been brought to my attention that the Inspector's final report in relation to the emerging County Durham Plan (CDP) was published on 17 September 2020. Having considered the report, it is clear that, although the Plan has a number of deficiencies in respect of soundness, the Inspector has concluded that, subject to a number of main modifications, it will meet the criteria for soundness. Notwithstanding this, as the CDP is at an advanced stage of plan-making, it is a material consideration in the determination of this appeal.
16. I have had regard to the emerging CDP policies presented by the parties in coming to my decision, including emerging Policy 6 which relates to development on unallocated sites, and subsequently found no harm or conflict. In any event, the Council's view is that emerging Policy 6 of the CDP is not materially different to existing local plan policy. Although the emerging policies presented by the parties do not affect my starting position in determining the appeal in accordance with the adopted development plan policies as presented, I nevertheless attribute moderate weight to them.
17. I note submissions from both parties regarding the Council's housing land supply position. 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 and I note that the appellant does not seek to challenge this position.
18. Notwithstanding this, the proposed development would provide a number of dwellings to meet local need, which would contribute positively towards the overarching Government agenda of boosting housing supply and is considered to be a benefit in favour of the proposal.
19. I note some inconsistencies in the Council's evidence with regard to the development plan policies against which the proposed development should be assessed, including references to paragraph 11d of the Framework. As set out earlier in this decision, I have found the development plan to be consistent with the Framework and thereby consider it to be up-to-date. I have also found the

- proposal to be acceptable when judged against the development plan as a whole, including the specific policies as cited, and that no harm would arise as a result of the proposed development gaining planning permission.
20. I have had regard to a number of local objections raised, where these relate to planning matters for consideration, including but not limited to the potential effect of the development on ecology, landscape, traffic generation and the current informal use of the site as public open space.
21. Having had regard to the evidence, there are no outstanding technical objections to the proposed development from the Council or statutory consultees, from an ecological, landscape or highways perspective. Therefore, and despite third party concerns to the contrary, I have little reason to conclude that the proposed development and accompanying mitigation would be insufficient or otherwise unacceptable.
22. The site constitutes private land and therefore the current use of the site as public open space, particularly for dog walking, is an informal arrangement and at the discretion of the landowner. I also note that an existing Public Right of Way (PROW), Footpath No.38 (Consett), runs alongside but outside the site boundary, which could be utilised for this purpose. I therefore give objections to this effect limited weight in the determination of this appeal.
23. As detailed permission is sought for access, I have also considered the evidence in this regard. I am satisfied that this issue was adequately considered as part of the determination of the application and that no outstanding concerns or objections exist on behalf of the Council or statutory consultees. As there is nothing before me to suggest otherwise, I therefore find the access details as submitted to be acceptable.

Planning Obligations

24. The parties have provided me with a signed and executed section 106 agreement, in conjunction with Durham County Council, which includes a number of obligations to come into effect if planning permission is granted. I am satisfied that the section 106 agreement provided in evidence is fit for purpose as a deed and I have considered it accordingly. I have also considered the obligations presented in light of the statutory tests contained in Regulation 122(2) of The Community Infrastructure Levy (CIL) Regulations 2010, as also outlined at paragraph 56 of the Framework.
25. The first obligation relates to the provision of 10% affordable housing units on the site, in the form of affordable home ownership.
26. The second obligation relates to £470,496 towards providing additional primary teaching facilities across the Consett Primary Pupil Place Planning Area 21.
27. The third obligation relates to £215,202 towards providing additional teaching facilities at Consett Academy.
28. The fourth obligation relates to £170,485.50 towards improving offsite open space and recreational provision within Delves Lane Electoral Division.
29. The fifth obligation relates to £50,715 for improving access to healthcare provision in the vicinity of the development but including a final sum review

clause given potential adoption of Council's 'Developer Contributions to Mitigate Impacts on Health Policy'.

30. The sixth obligation relates to £11,000 to be used by the Council towards biodiversity enhancements in accordance with the framework identified in Durham County Council's Local Biodiversity Compensation Strategy.
31. On the evidence before me, it appears that, in relation to the first, fourth, fifth and sixth obligations, the need for the contributions sought by the Council arises from the development and satisfies the 3 tests of the CIL Regulations, namely that they are necessary to ensure that the development is acceptable in planning terms, directly related to the development are fairly and reasonably related in scale and kind to the development.
32. In relation to the second and third obligations, I note that there is dispute between the parties and I have considered the evidence in this regard, the latest of which is in the form of a letter on behalf of the appellant dated 27th April 2020. Having considered the evidence of both parties, I have found the appellant's evidence to be persuasive, particularly with regard to the presence of reasonable surplus capacity in both the primary and secondary schools that would accommodate the development, in the short and longer term. I am not satisfied that the Council have adequately justified the details of their position, nor rebutted the appellant's evidence to an acceptable degree.
33. On balance, I therefore consider that the Council's position in this instance is not justified, and that the relevant planning obligations are not necessary to make the development acceptable in planning terms. I am satisfied that suitable capacity exists locally which could accommodate the proposed development and on that basis that I am convinced that no harm will arise in this regard. I therefore do not find the second and third obligations necessary or proportionate and therefore I am not taking them into account in my decision.

Conditions

34. A schedule of conditions for the proposed development is provided by the Council and I note the appellant's agreement in this regard. I have therefore reviewed the conditions as agreed by the parties and considered them in line with paragraph 55 of the Framework. The wording of some conditions has been adjusted where necessary, in the interests of clarity and to ensure compliance with relevant guidance.
35. I have imposed the statutory time limit condition, with regard to the submission of reserved matters and subsequent deadline for commencement of development.
36. For the avoidance of doubt, conditions are necessary in requiring that the development is carried out in accordance with the approved plans and that the development shall be for up to 105 dwellings.
37. To ensure the safeguarding of any archaeological findings, conditions are necessary regarding the submission and approval of a scheme of archaeological investigation, subsequent analysis, publication and archive.

38. In the interests of safeguarding residential amenity and ensuring health and safety, a condition requiring the submission and implementation of a Construction Management Plan is necessary.
39. With regard to highway safety, conditions requiring the submission of full engineering details of the new access onto Gloucester Road, the implementation and future maintenance of the internal highway network layout and the submission of details in relation to the mini roundabout road junction improvement, as agreed in principle with the highway authority, are necessary.
40. In the interests of ensuring adequate drainage provision and the protection of residential amenity, conditions requiring the submission of a detailed scheme for the provision of foul and surface water, details of finished floor levels, proposed site levels, and all means of enclosure to be erected within the development are necessary.
41. To ensure the protection of trees and hedgerows, submission of details of those proposed for retention together with protection measures, prior to the commencement of works, is necessary.
42. In the interests of protecting biodiversity, conditions requiring the development to be carried out in accordance with the recommendations outlined within the Preliminary Ecological Appraisal and mitigation details of ongoing maintenance of areas of public open space, including any on-site biodiversity mitigation are necessary.
43. A condition requiring submission of a final travel plan is necessary, to ensure the promotion of sustainable forms of transport.
44. To ensure a reasonable amount of public open space is provided, based on the scale of the proposed development, a condition requiring no less than the minimum agreed amount of open space to be provided on site is necessary.
45. In the interests of protecting residential amenity, a condition to limit the operational hours of the site during the demolition and construction phase of development is required.
46. In the interests of preserving the character and appearance of the area, a condition requiring the submission of a northern boundary edge landscaping buffer planting scheme is necessary.
47. It is necessary that the requirements of conditions 3, 6, 8, 9, 11 and 12 are agreed prior to the development commencing to ensure an acceptable form of development in respect of preserving the character and appearance of the area, safeguarding archaeological interests, residential amenity, highway safety, flood prevention and ensuring that trees and hedgerows to be retained are protected.

Conclusion

48. For the reasons set out, I conclude that the appeal should be allowed.

M L Milliken

INSPECTOR

Schedule of Conditions

- 1) Application for approval of reserved matters shall be made to the Local Planning Authority before the expiration of three years beginning with the date of this permission.
- 2) The development must be begun not later than the expiration of two years from the final approval of the reserved matters.
- 3) Approval of the details of appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be obtained in writing from the Local Planning Authority before any development is commenced.
- 4) The development hereby approved shall comprise no more than 105 dwellings in total.
- 5) The development hereby approved shall be carried out in strict accordance with the following approved plans and documents: Drawing No. CAD01/Ind01 Site Location Plan received 12/07/2017 and Drawing No. 1640.03.01 Rev D Sketch Housing Layout.
- 6) No development shall commence until a Written Scheme of Investigation setting out a phased programme of archaeological work in accordance with 'Standards For All Archaeological Work In County Durham And Darlington' has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work will then be carried out in accordance with the approved scheme of works.
- 7) No dwelling shall be occupied until a post-investigation archaeological assessment has been completed in accordance with the approved Written Scheme of Investigation. The provision made for analysis, publication and dissemination of results, and archive deposition, shall be confirmed in writing to, and approved by, the Local Planning Authority within a timeframe to be agreed by the parties.
- 8) No development or any works of demolition, shall be carried out until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:
 1. A Dust Action Plan including measures to control the emission of dust and dirt during construction;
 2. Details of methods and means of noise reduction/suppression;
 3. Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration;
 4. Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site;
 5. Designation, layout and design of construction access and egress points;
 6. Details for the provision of directional signage (on and off site);

7. Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;
8. Details of provision for all site operatives for the loading and unloading of plant, machinery and materials;
9. Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period;
10. Routing agreements for construction traffic;
11. Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
12. Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works;
13. Management measures for the control of pest species as a result of demolition and/or construction works; and
14. Detail of measures for liaison with the local community and procedures to deal with any complaints received. The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall be adhered to throughout the demolition and construction period, and the approved measures shall be retained for the duration of the construction works.

- 9) No development shall commence until full engineering details of the new access onto Gloucester Road, consistent with that shown on approved Drawing No. 1640.03.01 Rev D Sketch Housing Layout, have been submitted to and agreed in writing with the Local Planning Authority. The access scheme shall be designed to a width of 5.5m with 6m entry junction radii, site visibility splays of 2.4m x 43m shall be clearly demonstrated and shall include full details of the relocation of existing public transport infrastructure adjacent to the site entrance. The development shall thereafter be completed in accordance with the approved details prior to first occupation of any dwelling and the access shall be, as approved, retained for the lifetime of the development.
- 10) Prior to the occupation of the first dwelling hereby approved, full engineering details and a timetable of implementation and future maintenance of the internal highway network layout, including private shared drives and pedestrian footways, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the details and an agreed programme for implementation.
- 11) No development shall commence until a detailed scheme for the provision of foul and surface water drainage informed by Flood Risk Assessment Rev. A dated June 2017, Surface Water Drainage Strategy Rev. A dated June 2017 and Sketch Drainage Plan dwg. no. SK-11/02/2019 has been submitted to and approved in writing by the Local Planning Authority. The scheme for

surface water drainage shall include sustainable urban drainage systems within the design in accordance with the Council's SUDs Adoption Guide 2016 and details of the management and maintenance regime for those systems. The drainage shall be completed in accordance with the details and a programme as agreed.

- 12) No development shall commence nor any works to trees or hedgerows until details of the trees and hedgerows proposed for retention have been submitted to and approved by the Local Planning Authority. Once agreed, retained trees shall be protected by the erection of fencing and comprising a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar in accordance with BS 5837:2012. Protection measures shall remain in place until the cessation of the development works.
- 13) Prior to the construction of the first dwelling hereby approved full engineering details of the mini roundabout road junction improvement layout at Delves Lane/Gloucester Road shall be submitted to and agreed in writing with the Local Planning Authority. The development shall thereafter be completed in accordance with the approved details prior to occupation of the fiftieth dwelling.
- 14) Prior to the construction of the first dwelling hereby approved full details of the proposed site levels, finished floor levels and all means of enclosure to be erected within the development shall be submitted to and approved in writing by the Local Planning Authority. The submitted details must include details of any retaining walls/structures required including their interaction with other means of enclosure such as garden fences within the site. The development shall thereafter be carried out in accordance with the approved details.
- 15) Prior to the occupation of the first dwelling, a scheme for the ongoing maintenance of any areas of public open space, including any on-site biodiversity mitigation within the development hereby approved shall have been submitted to and approved in writing by the Local Planning Authority. In the event of proposals to maintain the public open space by means other than through transfer to the Local Authority then the scheme shall provide for details of an agreed maintenance and cutting schedule in perpetuity.
- 16) Within a period of six months of the first occupation of any part of the development, a final Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and adhered to thereafter in accordance with the approved timescales.
- 17) A minimum of 2,771sqm of open space shall be provided on site.
- 18) The development shall be carried out in accordance with the recommendations outlined within Section H of the Preliminary Ecological Appraisal R02 by E3 Ecology Ltd dated June 2017.
- 19) No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1300 on Saturday. No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1700 on Saturday. No construction works or works of demolition

whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays. For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.

- 20) Reserved matters details submitted must include the provision of a northern boundary edge landscaping buffer planting scheme as indicatively proposed on the Sketch Housing Layout (Drg. No 1640.03. Rev.D).