

Appeal Decision

Site Visit made on 15 December 2020

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2021

Appeal Ref: APP/Z2315/W/20/3249395

Land to the north of Higher Saxifield Street, Burnley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Countryside Homes North West Ltd against the decision of Burnley Borough Council.
 - The application Ref FUL/2019/0315, dated 24 May 2019, was refused by notice dated 29 November 2019.
 - The development proposed is the erection of 130 dwellings with associated access roads, open space, landscaping and vehicular access from Standen Hall Drive, following the demolition of No 64 Standen Hall Drive.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 130 dwellings with associated access roads, open space, landscaping and vehicular access from Standen Hall Drive, following the demolition of No 64 Standen Hall Drive at Land to the north of Higher Saxifield Street, Burnley, in accordance with the terms of the application, Ref FUL/2019/0315, dated 24 May 2019, subject to the conditions contained at Annex A.

Main Issues

2. The main issues are the effect of the proposal on the safety and capacity of the local highway network; and, on local facilities and affordable housing provision.

Reasons

Safety and Capacity of the Local Highway Network

3. The appeal site is located to the north and east of existing areas of housing, on land that is predominantly rough pasture. Beyond the appeal site are further grass fields, hedgerows, and some areas of woodland. The site is currently accessible to vehicles via a track to the north of Standen Hall Drive, which is a residential street serving the existing housing, and which joins Briercliffe Road to the south.
4. The appeal proposal would upgrade the existing vehicular access from Standen Hall Drive, which would be widened following the demolition of No 64. This would be the only motor vehicle access point for the site, meaning all traffic associated with the proposal would have to use it and subsequently Standen Hall Drive. Whilst there is reference to an emergency access onto Camp Street in the evidence, I note that no details of this were provided and that the Council did not consider it further.
5. The appeal site is allocated for housing in the development plan - Policy HS1/9 - Higher Saxifield of Burnley's Local Plan 2018 (BLP). This states that around

- 120 new dwellings could be constructed there, within certain specified parameters, including in relation to access and transport.
6. A development of this scale requires a Transport Assessment (TA) to be submitted to address, amongst other things, its impact on nearby highway infrastructure.
 7. The Local Highway Authority was consulted on the proposal, was satisfied with the accompanying TA and did not object to the development. However, a considerable number of local residents were concerned with the methodology of the TA, including the assessment of on-street parking; recorded accident data; and the scope and methodology for the assessment of nearby junctions.
 8. I note that the TA submitted alongside the appeal proposal is significantly different and less comprehensive than the TA submitted alongside a subsequent development proposal for the appeal site. The subsequent proposal is similar to the appeal proposal, albeit slightly smaller in scale, and was submitted following the refusal of planning permission for the appeal development.
 9. From the evidence, the TA that accompanied the subsequent proposal for 117 new dwellings on the appeal site, addressed the methodological concerns that had been raised in relation to the TA for the appeal proposal. I note that the Council is minded to approve the subsequent proposal, subject to a S106 Agreement¹.
 10. The appellant's evidence² is consistent with the methodology contained in the TA for the subsequent scheme and shows that the appeal development would not have an unacceptable impact on the local highway network. Two junctions³ would be adversely affected by the proposal to a very limited extent in the future. Whilst these junctions are said to be currently operating in excess of their effective capacity during parts of the morning and evening peaks, any further delays resulting from the proposed development would not make the situation significantly worse.
 11. The Council has not disputed these findings in its Statement of Case, instead focusing on why it considered the initial TA to be unacceptable in comparison to the TA for the subsequent scheme and the appellant's appeal evidence.
 12. The proposed development would be slightly larger in scale than that referenced in the development plan for this site, and to the aforementioned scheme that the Council is minded to approve. However, these differences in scale are relatively minor and the development plan allocation is only indicative. In any event, I am satisfied from the submitted evidence that the proposal would not have a severe impact upon the local highway network.
 13. For these reasons the proposed development would not cause unacceptable impacts in terms of the safety and capacity of the local highway network. It would, therefore, accord with Policies SP1 (Achieving Sustainable Development), IC1 (Sustainable Travel) and IC2 (Managing Transport and Travel Impacts) of the BLP and with the National Planning Policy Framework 2019 (the Framework).

¹ LPA Ref. FUL/2020/0028

² DTPC – Evidence on Highway and Transportation Matters, March 2020

³ Briercliffe Road / Marsden Road Y-shaped priority junction; and, Casterton Avenue / Briercliffe Road roundabout junction.

Local Facilities and Affordable Housing Provision

14. The proposed development would have an impact on demand for local services and facilities and could provide some affordable housing to contribute towards meeting the existing need within Burnley. Pursuant to this, a draft S106 planning obligation accompanied the planning application and an executed S106 Agreement, comprising four 'Counterpart' documents was submitted as part of the appeal.
15. The executed S106 Agreement was submitted outside of the clearly defined timescales contained in the Procedural Guide Planning Appeals – England, November 2020 (the Procedural Guide)⁴ and the subsequent deadline I myself specified.
16. Upon review I was concerned that the submitted S106 Agreement was inconsistent with the guidance contained in Annexe N of the Procedural Guide and may be flawed. I therefore asked the main parties to respond to a number of specific issues.
17. After receiving these responses, I am now satisfied with the evidence of the parties' title to the land, which had not previously been provided.
18. The Procedural Guide is clear that Counterpart documents are not appropriate for Planning Obligations⁵. In exceptional circumstances, and where it is agreed in advance by the parties that it is the only practical option, they may be acceptable. Whilst no prior notification was provided to me that the S106 Agreement would be in the format of Counterpart documents, I am satisfied in light of the pandemic and the locations of the various parties that this approach is acceptable in this case.
19. The inclusion of handwritten sections within some of the Counterparts is not at all helpful in terms of their legibility. Nevertheless, the appellant's solicitor has certified that the Counterpart documents are true copies of the original documents and that the four Counterparts are legally identical. There are minor differences between them⁶, as well as minor typographical errors⁷. However, these do not cause me to view the S106 Agreement as flawed.
20. The wording of the S106 Agreement is somewhat unclear as to whether it would be binding upon the respective successors in title to the parties⁸. However, I note the comments provided by the main parties in this regard and that their solicitors are both content the Council's ability to enforce the obligation against successors in title is sufficiently protected. In light of the Council's stated position, I am also satisfied that this aspect of the obligation is adequate.
21. The proposal would increase demand for local facilities, including schools and children's play areas and from the evidence, financial contributions towards the expansion and improvement of existing facilities would, therefore, be needed.
22. For Primary Schools, a contribution towards the provision of an additional 35 places would be needed (£561,768.90), with the nearby Holy Trinity RC Primary School identified. For Secondary Schools, a contribution towards the provision of 15 additional places at the nearby Burnley Unity College has been identified (£362,777.40).

⁴ Appendix D.1 of the Procedural Guide

⁵ Paragraph N.5.4 of the Procedural Guide

⁶ The handwritten section 25

⁷ The written and numerical value of the Secondary School Contribution at Paragraph 1.1

⁸ Paragraph 2.2 of the S106 Agreement

23. In terms of recreational open space provision, a contribution of £40,000 towards the improvement of two nearby children's play facilities at Standen Hall Drive and at Kibble Bank is identified.
24. Whilst I am satisfied with the derivation of the contributions towards school places, I am less so regarding the derivation of the open space contribution. No substantive evidence has been provided for this figure in relation to the proposed works. Nevertheless, I note the Council's covenants at Schedule 2 of the S106 Agreement and on balance I am prepared to accept the Council's statements in this regard.
25. I am also satisfied that there is a need for affordable housing within Burnley and so the provision of 13 affordable units would contribute towards meeting that need.
26. These elements of the S106 Agreement would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to it⁹.
27. For these reasons the proposed development would have an acceptable impact upon local facilities and affordable housing provision. It would, therefore, accord with Policies HS2 (Affordable Housing Provision), HS4 (Housing Developments) and IC4 (Infrastructure and Planning Contributions) of the BLP and with the Framework.

Conditions and Conclusion

28. The Council has suggested a number of conditions be attached to a grant of planning permission, were the appeal to be allowed. I have considered these in light of Government guidance and amended them accordingly.
29. With reference to Section 100ZA(5) of the Town and Country Planning Act 1990, I sought the written agreement of the appellant to the pre-commencement conditions (PCCs). The appellant has provided this, despite also raising concerns as to whether all needed to be PCCs. I have considered the appellant's comments within this context and with the exception of Condition 13 (below), I am satisfied that the remainder should be PCCs.
30. In addition to the standard commencement condition, a condition specifying the approved plans and documents would be necessary for reasons of certainty. A pre-commencement condition requiring the approval of materials to be used in the development would be manifestly necessary to protect the character and appearance of the area.
31. A pre-commencement condition requiring a phasing plan for the development to be approved would be manifestly necessary to protect the living conditions of future occupiers. A pre-commencement condition concerning tree/hedge protection measures would be manifestly necessary to protect the character and appearance of the area, the living conditions of future occupiers and biodiversity.
32. A pre-commencement condition concerning the avoidance of the clearance of vegetation, or works to drystone walls, during the bird nesting season, would be manifestly necessary to protect the biodiversity of the area.
33. Pre-commencement conditions requiring details of the site access and estate roads, pedestrian/cycle links, certain boundary treatments and off-site transport improvements to be approved would be manifestly necessary in the

⁹ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 56 of the Framework.

interests of highway and public safety and to protect the living conditions of future and nearby occupiers.

34. A pre-commencement condition requiring the approval of a Construction Method Statement/Environment Management Plan would be manifestly necessary to protect the living conditions of nearby occupiers and to prevent harm to the environment.
35. A pre-commencement condition requiring the approval and implementation of an archaeological investigation scheme would be manifestly necessary to protect any archaeological remains within the site. A pre-commencement condition requiring the approval of a surface water sustainable drainage scheme would also be manifestly necessary to drain the site and protect future and nearby occupiers from unacceptable flood risk.
36. A pre-commencement condition requiring the approval and provision of electric vehicle charging points, would be manifestly necessary to protect the living conditions of nearby and future occupiers and in the interests of highway safety.
37. A condition requiring full details of the ongoing management of non-private open space within the site would be necessary to protect the character and appearance of the area and the living conditions of future occupiers.
38. Conditions to ensure that adequate off-street car parking spaces are provided and retained at the approved dwellings, would be necessary to protect the living conditions of nearby and future occupiers and in the interests of highway safety.
39. A condition requiring the approval and implementation of a detailed Travel Plan for the development would be necessary to protect the living conditions of future and nearby occupiers.
40. Conditions concerning the approval of a sustainable drainage management and maintenance plan for the site and specifying separate drainage systems for foul and surface water would be necessary to protect the living conditions of future and nearby occupiers and prevent pollution of the environment.
41. A condition requiring details of bin storage areas for each dwelling would be necessary to protect the character and appearance of the area and the living conditions of future occupiers.
42. Conditions concerning planting, landscaping and habitat compensation would be necessary to protect the character and appearance of the area; the living conditions of future occupiers; and, biodiversity. A condition concerning the retention and repair of the drystone wall on the northern boundary of the site would be necessary to protect the character and appearance of the area.
43. A condition requiring various measures including investigations, a risk assessment and the implementation of remediation works should land contamination be discovered on site, would be necessary to protect the living conditions of future and nearby occupiers.
44. However, conditions concerning adaptable homes and water/energy efficiency measures would not be necessary, including because they are covered in the approved plans/documents condition.
45. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is allowed.

Andrew Parkin
INSPECTOR

Annex A – Conditions

1. The development hereby permitted must be begun within three years of the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Site Location Plan 1:1250 Rev B; AJ14 004; AJ14 SG1 001;
AJ14 DG1 001; AJ14 HT1 001 Rev A; AJ14 HT2 001 Rev A;
AJ14 HT3 001 Rev A; AJ14 HT3A 001 Rev A; AJ14 HT3B 001;
AJ14 HT4 001 Rev A; AJ14 HT5 001 Rev A; AJ14 HT6 001 Rev A;
AJ14 HT7 001 Rev A; AJ14 HT8 001 Rev A; AJ14 HT9 001 Rev A;
AJ14 HT10 001 Rev A; AJ14 HT11 001 Rev A; AJ14 HT12 001 Rev A;
AJ14 HT13 001 Rev A; 3311 101 Rev D; 3311 201 Rev C; 3311 202 Rev C;
3311 203 Rev B; 3311 204 Rev B; 3311 205 Rev C; AJ14 001 Rev B;
AJ14 002 Rev A; AJ14 003 Rev A; AJ14 008 Rev A; AJ14 006 Rev A;
AJ14 007 Rev A; AJ14 005 Rev B; AJ14 009; AJ14 010 Rev A;
Arboricultural Impact Assessment AIA.12977.01;
Heritage Impact Assessment (report no. RPT-001), dated May 2019;
Landscape Management Plan (3311 501 Revision B), dated October 2019;
Sustainability Report (ref AJ14 Rev A), dated October 2019; and,
Framework Travel Plan (report no. J345/FTP), dated May 2019.
3. Prior to the commencement of the development hereby permitted, details and representative samples of the external materials of construction to be used on the walls and roofs of buildings; and, details of surfacing materials to be used on the roads, driveways, and parking spaces, shall be submitted to, and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved materials.
4. Prior to the commencement of the development hereby permitted, a Phasing Plan, which shall set out the phasing of all development works on the site, including construction, access, parking, boundary treatments, open space provision/landscaping and drainage, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved Phasing Plan.
5. Prior to the commencement of the development hereby permitted, a scheme for protecting the trees and hedges to be retained on or adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority. This shall include the protection of root structures from injury or damage prior to and during the development works, including from the excavation of trenches or channels or from the depositing of soil waste or other materials. The approved scheme of protection shall be fully implemented before any

works are undertaken, including any site clearance work, and thereafter retained throughout the construction of the development.

6. No vegetation clearance, or works to any drystone wall, shall take place during the bird nesting season between March and July inclusive, unless evidence from a qualified ecologist demonstrating that no nesting birds would be affected by the works, has been submitted to and approved in writing by the Local Planning Authority.
7. Prior to the commencement of the development hereby permitted, a scheme for the construction of the site access and estate roads/paths, including the engineering, drainage, street lighting and constructional details; and, associated off-site works of highway improvement, which shall include for the upgrading of two bus stops at Briercliffe Road, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved Phasing Plan before any dwellings are first occupied.
8. Prior to the commencement of the development hereby permitted, details of the pedestrian/cycle links to be provided between the site and Saxifield Street, Camp Street and Cuerdale Street; and, details of the boundary treatment measures to prevent access/egress between the site and Saxifield Street by motor vehicles, shall be submitted to and approved in writing by the Local Planning Authority. The approved pedestrian/cycle links and boundary treatment measures shall be constructed in accordance with the approved details before any dwellings are first occupied and shall be retained for use at all times thereafter.
9. Prior to the commencement of the development hereby permitted, a Construction Method Statement/Environment Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Statement/Plan shall be adhered to throughout the clearance/construction period. The Statement/Plan shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoardings;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) vehicle wheel washing facilities;
 - vii) the mechanical sweeping of construction debris from adjacent roads as necessary;
 - viii) full details of working days/hours at the site, including for deliveries;
 - ix) contact details for the site manager;
 - x) routing of delivery vehicles to/from the site; and,
 - xi) protection measures to avoid pollution of watercourses during site clearance and the construction of the development.

10. Prior to the commencement of the development hereby permitted, a scheme of archaeological trial trenching to investigate the possible early site of Lower Saxifield and the anomalous features identified in the Lidar Survey accompanying the approved Heritage Impact Assessment, shall be carried out. The results of the work and the conclusions drawn from those results shall be submitted to and approved in writing by the Local Planning Authority. In the event that archaeological remains are encountered then a subsequent phase of impact mitigation and a phase of appropriate analysis, reporting and publication shall be developed and a further Written Scheme of Investigation shall be submitted to and approved in writing by the Local Planning Authority and implemented before development commences. All archaeological works shall be undertaken by an appropriately qualified and experienced professional archaeological contractor bound by the standards and guidance set out by the Chartered Institute for Archaeologists.
11. Prior to the commencement of the development hereby permitted, details of the design and implementation of a surface water drainage scheme, based on sustainable drainage principles, shall be submitted to, and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented prior to the first occupation of any dwelling and shall be retained as such thereafter.
12. Prior to the commencement of the development hereby permitted, drawings showing the design and position of electric vehicle charging points within plots, shall be submitted to, and approved in writing by the Local Planning Authority. The charging points shall use (as a minimum) a three-pin 13-amp electrical socket to enable the charging of an electric vehicle using a 3m length cable and shall be installed and be operational in accordance with the approved drawings prior to the first occupation of the respective dwellings.
13. Prior to the occupation of the first dwelling of the development hereby permitted, details of the delivery and funding mechanisms for the in-perpetuity management and maintenance of all areas of open space within the site, excluding private gardens, shall be submitted to, and approved in writing by the Local Planning Authority. This shall be in accordance with the approved Landscape Management Plan (Ref. 3311 501 Revision B).
14. Prior to any dwelling being first occupied its associated car parking shall be fully constructed and available for use in accordance with the approved plans. The car parking spaces associated with each dwelling shall thereafter be retained for the purposes of car parking at all times.
15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the garages hereby approved (including integral/attached/detached garages) shall remain available at all times for the parking of a motor vehicle and shall not be altered to provide habitable space.
16. Prior to any dwelling being first occupied, a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The detailed Travel Plan shall thereafter be implemented in accordance with the timescales contained within it and shall be audited and updated at intervals of not greater than 18 months. The measures contained within the Travel Plan shall be adhered to at all times.

17. Prior to the first occupation of any dwellings on the site, a Management and Maintenance Plan for the surface water drainage scheme, covering the lifetime of the development, shall be submitted to, and approved in writing by the Local Planning Authority. The surface water drainage scheme shall be maintained and managed in accordance with the approved Management and Maintenance Plan.
18. Foul and surface water shall be drained on separate systems.
19. Prior to the first occupation of any dwelling, details of the concealed storage areas for refuse and recyclable waste containers for each dwelling shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of each dwelling and shall thereafter be retained at all times.
20. All planting, seeding or turfing comprised in the approved details of landscaping set out on the approved Landscape Layout (drawing number 3311 101 Rev D) and planting plans on sheets 1-5 (drawing numbers 3311 201 Rev C; 3311 202 Rev C; 3311 203 Rev B; 3311 204 Rev B; and, 3311 205 Rev C) shall be carried out in the first planting and seeding seasons following the first occupation of any of the dwellings; any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
21. All the measures indicated on the approved Habitat Compensation Plan (drawing number AJ14 010 Rev A) shall be carried out in accordance with the approved Phasing Plan. The measures provided in accordance with the approved Habitat Compensation Plan shall be retained in perpetuity.
22. The drystone wall on the northern boundary of the site shall be retained and where necessary, shall be repaired at its current height and appearance prior to the completion of the development.
23. In the event that any previously unidentified or unexpected contamination is found at any time during the development process, development shall cease and this shall be reported in writing immediately to the Local Planning Authority. A full risk assessment, including investigations as necessary, shall be carried out and submitted with a Remediation Scheme and shall be approved in writing by the Local Planning Authority before development re-commences. The development shall thereafter be carried out in accordance with the approved Remediation Scheme and once completed, a Validation Report shall be submitted to the Local Planning Authority and approved in writing prior to the occupation of any dwellings.