



Appeal Decision

Site visit made on 23 February 2021

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2021

Appeal Ref: APP/P2935/W/20/3263354

Fir Tree Nursery Site, Widdrington Station, Northumberland NE61 5DW

- 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 Mr Clive Milner against the decision of Northumberland County Council.
 - The application Ref 20/00395/FUL, dated 30 January 2020, was refused by notice dated 4 June 2020.
 - The development proposed is Change of use from former garden nursery site to 2No detached residential houses and associated access road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The emerging Northumberland Local Plan will eventually replace the Castle Morpeth District Local Plan 2003 (LP). However as this is an emerging document, I apply limited weight to its policies.

Main Issues

3. The Council's second reason for refusal relates to the absence of a completed planning obligation to secure satisfactory mitigation of the impact of the proposal on designated sites on the coast of Northumberland. The appellant submitted a Unilateral Undertaking with the appeal. The Council has confirmed it is satisfactory and that it no longer wishes to pursue the second reason for refusal. On the basis of the evidence before me, I see no reason to take a different view.
4. Therefore, the main issues in this appeal are:
 - Whether or not the site would be a suitable location for housing having regard to local plan policies relating to development beyond the settlement boundary and its effect on character and appearance; and
 - The risk of land contamination.

Reasons

Whether or not the site would be acceptable for housing development

5. The site is a clearing in the woodland that acts as a natural and physical boundary to the settlements of Widdrington Station and Stobswood. It is close

to but distinctly separate from the built-up environment. Although the site is overgrown in appearance and no longer operates as a nursery, the physical evidence of a nursery garden and its various paraphernalia is obvious. The site reflects its original use and, even in its present condition, it physically, functionally and visually relates to the countryside environment.

6. I note the appellant's references to the established use of the site. However, I have not been provided with a Certificate of Lawfulness of Existing Use or Development under s191 of the Town and Country Planning Act. Whilst, in the context of an appeal dealing solely with an application for planning permission, it is not my role to conduct an assessment as to lawful use or operation. There is nothing in the evidence before me to demonstrate that there is an established mixed use at the appeal site.
7. The former nursery garden is an agricultural use, and it appears that the retail sales were restricted, and the cafe served as a very minor and ancillary function. Accordingly, I am not persuaded that the site is previously developed land as defined within Annex 2 of the National Planning Policy Framework (the Framework).
8. Policy C1 of the LP restricts development outside settlement boundaries unless the proposals can be justified as essential to the needs of agriculture or forestry or are permitted by other LP Policies which allow for certain forms of employment, tourism and sport and recreation related development. None of the types of development referred to in the policy apply in this case.
9. LP policy WSC1 defines settlement boundaries for the villages of Widdrington Station and Stobswood. The appeal site is situated outside these settlement boundaries.
10. The supporting text to LP Policy C1 explains the Council will seek to protect and enhance the character and natural heritage of the open countryside outside settlement boundaries. Furthermore, the supporting text to LP Policy WSC1 sets out the Council's aim to retain the individual character of Stobswood and protect the woodland between it and Widdrington Station.
11. What structures remain on site are low-level buildings that blend with their surroundings. In contrast, the proposal would create two new detached houses in this location, approximately 16m wide by 10m deep with a ridge height of approximately 8m. This, together with detached garages large enough to accommodate three cars each, would amount to significantly more development at the site, of a large scale and mass.
12. The physical presence of this development would be further pronounced given the domestic paraphernalia that two residential dwellings would generate within their spacious plots that would occupy all the site area.
13. Furthermore, even though no trees would be removed as part of the scheme, I am not convinced that the proposal would not be visible from the public domain through the existing landscaping, especially from the main road.
14. The proposal would not maintain the rural character of the plantation within the countryside setting whereby its intrinsic character and beauty are recognised and should be protected. In contrast, the woodland setting would be eroded by incongruous and discordant encroachment of development.

15. Therefore, to conclude on this main issue, the site would not be a suitable location for housing and the proposal would result in visually obtrusive development within the countryside, harmful to the character and appearance of the area. The proposal would be contrary to LP Policies C1 and WSC1 which seek to maintain the rural character of the area, LP Policy H15 in its broad design objectives and LP Policy H16 that permits houses in the countryside only in specific circumstances to which this proposal is not an exception.

Land contamination

16. The surrounding area has a legacy of coal mining. I am aware of the history of gas build-up from an adit finding a pathway into a building within close range to the appeal site, resulting in a fatality in 1995.
17. Within the Planning Practice Guidance, a flow chart procedure guides how contamination is dealt with in the decision-making process. A Phase I desk-based report was commissioned by the appellant. The Phase I report is intended to evaluate the risk and inform the Phase II Intrusive Site Investigations.
18. The Consultant's Coal Mining Report of 5 March 2020 is a source of evidence that should be used to evaluate site risk, and advises that further investigative works are required. It identifies the 'Coal Authority Mine Gas Emission Report Mining Report' is consulted to inform the conceptual model from which risk assessment can be designed. This matter has been brought to the attention of the appellant by the Council's Environmental Health Officer although there is no evidence presented to demonstrate this has been undertaken.
19. Due to the coal mining legacy that occurred close to the site and landfilling around 2005, lateral migration of gas from the fill, together with the known fatality even though the particular adit has been treated, the Council are of the view that the site presents a 'High or Very High' risk level in accordance with BS 8576:2013 'Guidance on investigations for ground gas, permanent gases and Volatile Organic Compounds'. Gas monitoring over six to twelve months with hourly monitoring is therefore recommended. I have no evidence on the contrary to disagree with this, furthermore, the appellant does not dispute the possibility of lateral gas migration from the opencast fill.
20. The Phase I conceptual model identifies the source of pollution from the former opencast site and the pathway of gas migration and receptor of construction workers and future residents to be 'plausible'. It goes on to state that the preliminary assessment of perceived risk for 'Public & Neighbours' and 'site users' as a risk rating of 'low'. This is caveated by 'assumes development is viable and any remediation measures undertaken'. Its summary concludes that soil investigation and soil gas monitoring is undertaken.
21. As it has not been demonstrated that all the relevant sources of information have been exhausted to inform the site's risks within the Phase I report, and the disagreement between the parties regarding risk ratings, I am of the view that there is insufficient evidence to demonstrate that the Phase I report and conceptual model is satisfactorily sound to fully identify risks on site.
22. Furthermore, this calls into question the scope of works identified within the undated Exploratory Soils Investigation and the consequential findings of the Exploratory Soil Investigation September 2020 which undertook gas monitoring

not in accordance with the monitoring of BS 8576:2013. These results are concerning given the findings of the borehole investigations indicate 'The source of the low oxygen and elevated carbon dioxide measured within the 2 rotary boreholes may emanate from lateral migration from worked seams in the area via areas of backfill within former opencast sites.' This further underpins the necessity to align with the Framework in its advice to ensure the site is suitable for its proposed use and, critically 'where a site is affected by contamination...responsibility for securing a safe development rests with the developer..'.

23. Furthermore, within the summary from the Proposed Exploratory Soil Investigation its recommendation for unspecified 'gas measures' and a 'gas membrane' does not bring me to the view that it would meet the requirements of the Framework. Neither would additional gas monitoring on site lead me to a satisfactory conclusion given my earlier findings.
24. There may be other contaminants on site and 'significant' hydrocarbon content and polyaromatic hydrocarbons were elevated in places that are concluded to be deemed 'unsuitable for residential sites with private gardens'. These contaminants may be acceptably remediated and validated, and this may be achieved by way of imposing conditions, however I remain unconvinced that, overall, the use of conditions would meet the tests of paragraph 55 of the Framework.
25. To conclude on this main issue, given the coal mining legacy at the site and the potential risk by way of contamination that I apply significant weight to, there is insufficient evidence presented to demonstrate that the site could be made safe, and therefore the proposal would be contrary to Policy RE8 of the LP and the Framework to ensure the site is safe.

Planning Balance

26. The Framework sets out that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The Council submit that they can demonstrate five years supply of deliverable housing sites. The appellant provides no evidence to the contrary.
27. There would be a conflict with relevant development plan policies in relation to both Main Issues. The LP dates from 2003 but the weight to be attached does not hinge on its age. Rather, paragraph 213 of the Framework makes it clear that weight should be given to existing policies according to their degree of consistency with the Framework. The countryside is not protected for its own sake, but its intrinsic character and beauty is recognised by the Framework, which also seeks to ensure that developments add to the overall quality of the area. Moreover, the Framework aims to prevent new development within the countryside from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.
28. Whether or not the policies are out of date may include a significant change in circumstances on the ground. I have been made aware of a recently approved housing scheme outside the development settlement of Widdrington Station.

Whilst that development does have a bearing on my assessment of the appeal proposal, it was approved for very specific reasons. However, it does not mean to say that this would render the LP settlement boundary policies out of date.

29. Furthermore, I note the Blue House Farm Road appeal the appellant refers to and reference to 'historic' settlement policies. However, that proposal was in an area covered by the Wansbeck District Local Plan, so the development plan context was different. Moreover, the Inspector's findings on the location of that scheme in relation to the nearby settlement considered the accessibility of services rather than the effect on the character and appearance of the area. The two cases are therefore not comparable.
30. I find LP policies C1 and WSC1 are consistent with the Framework aims to protect the natural environment, and the conflict between the proposal and these policies should therefore be given significant weight in this appeal.
31. LP Policy RE8 is entirely consistent with the Framework requirement for policies to ensure that a site is suitable for its proposed use taking account of contamination. This policy is fundamental to the determination of this appeal and I afford significant weight to the conflict between the proposal and this policy.
32. The requirement of LP Policy H15 to be compatible with local character is consistent with the design aims of the Framework for development. Thus, I give significant weight to the conflict arising between the appeal scheme and this policy.
33. LP Policy H16 states that new houses in the open countryside will only be permitted if they are required in connection with the day-to-day operation of an agricultural or forestry enterprise. This is more restrictive than the Framework policies in relation to new homes in the countryside. I therefore apportion moderate weight to the conflict between the proposal and this policy.
34. In relation to the most important policies, I have found that one of the development plan policies is out of date, but not the majority. Overall, I consider that the basket of most important policies is not out-of-date in this case. For these reasons the "tilted balance" of Framework paragraph 11d) would not be engaged. The presumption in favour of sustainable development would not apply.
35. Set against the identified harm, there would be benefits arising from the proposal in terms of the contribution two houses would make to housing numbers in the area, although this would be very small. The site would be located within walking distance to the local amenities and services of Widdrington Station and is recognised as within easy commuting distance to employment centres. These matters weigh in its favour, however I apportion little weight to them given the small scale nature of the scheme.
36. Consequently, the adverse effects on the character and appearance of the area and the potential for risk from land contamination would significantly and demonstrably outweigh the benefits.

Conclusion

37. The proposal would conflict with the development plan as a whole and there are no material considerations, including the provisions of the Framework, which indicate that the decision should be taken otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

Alison Scott

INSPECTOR