



Appeal Decision

Site Visit made on 27 July 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/Z4718/W/21/3274396

Land to south of Whitley Road, Whitley Lower

Easting: 422042, Northing: 417759

- 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 Paul Collins against the decision of Kirklees Metropolitan Council.
 - The application Ref 2020/60/93432/E, dated 6 October 2020, was refused by notice dated 30 March 2021.
 - The development proposed is outline planning permission (all matters reserved) for 2no. dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for 2no. dwellings at Land to south of Whitley Road, Whitley Lower, Easting: 422042, Northing: 417759 in accordance with the terms of the application, Ref 2020/60/93432/E, dated 6 October 2020, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. The application is submitted in outline form with all matters reserved for later consideration. Therefore, whilst plans have been submitted suggesting how two dwellings could be accommodated on the appeal site, these have been provided for indicative purposes only.
3. The revised National Planning Policy Framework (The Framework) was published on 20 July 2021. This document does not however materially change the approach to the main issue arising from this appeal, when compared to its predecessor, and therefore no further comments have been sought from the parties.

Main Issue

4. The main issue is whether the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies.

Reasons

5. Paragraph 149 of The Framework states that the construction of new buildings is inappropriate in the Green Belt but it provides a number of exceptions, including at e) limited infilling in villages. There is no definition of what constitutes a village in The Framework, and I have not been made aware of any such definition being present within the development plan. With respect to

infill development, reference is made to Paragraph 19.31 of the Kirklees Local Plan Strategy & Policies 2019 (LPSP) which states that to constitute suitable infill, the plot should be small, normally sufficient for not more than two dwellings and within an otherwise continuously built up frontage.

6. The Oxford English Dictionary definition of a village is 'a group of houses situated in a rural area, larger than a hamlet and smaller than a town'. A hamlet is described as 'a small village, especially (in Britain) one without a church.' Whitley Lower has facilities and services present including a public house, a church and a community centre, together with a number of dwellings. The extent of the services and facilities that are available, including the church, along with the overall size of the settlement, mean that Whitley Lower must be considered to be a village.
7. The appeal site forms a gap between those dwellings which lead out from the village and two detached dwellings that stand more separately on the edge of the settlement. Opposite is a high reservoir embankment, which means that although the existing dwellings on that side of Whitley Road do not extend as far as the appeal site, there is nonetheless an impression of an engineered landform in the area opposite where the proposed dwellings would be located. Whilst the appeal site has a relatively wide frontage, the resultant plot sizes of the proposed dwellings would be similar to those of Aquaville and Ash Lynn and the depths of their gardens would extend to match those of the existing dwellings adjacent to it.
8. In this context, the proposed construction of two dwellings on the appeal site would form a logical and visually coherent addition to what is an otherwise continuously built up frontage. It would on that basis, and in terms of the quantum of development that is proposed, represent limited infill development. Whilst it is suggested that the size of the land means that a higher density could in theory be achieved in line with the 35 dwellings per hectare set out in Policy LP7 of the LPSP, that does not appear to be a realistic proposition given the layout of the existing dwellings in a linear form, the size of their plots and their relationships to one another. Furthermore, Paragraph 19.31 of the LPSP refers only to a requirement that a site normally is sufficient for not more than two dwellings, which allows for some flexibility if justified by the circumstances of a particular case.
9. Taken as a whole and for the reasons outlined, the proposed development would represent limited infilling in a village within what is an otherwise continuously built up frontage. It would therefore accord with paragraph 19.31 of the LPSP and with the exception set out in paragraph 149e) of The Framework, meaning that it would not be inappropriate development in the Green Belt. As the proposal is not inappropriate by virtue of representing limited infill in a village, there is no policy requirement to undertake any further assessment of the impact that would arise upon the openness of the Green Belt or against the purposes of the Green Belt.

Other Matters

10. Reference has been made to the planning history of the site, including an appeal that was dismissed in 2003 where the Inspector deemed that development on the appeal site would not represent infill, but I do not have the full details of earlier schemes or appeal decisions. In any event, a substantial period of time has passed since the previous decisions and they pre-date the

current development plan for the area and The Framework. I have, therefore, considered the appeal proposal on its own merits based on the information I have before me, my observations during the site visit and against the local and national planning policies that are in place at the current time, and I have exercised my own planning judgement with respect to the matter of infill development.

11. As the application has been submitted in outline form with all matters reserved, no details of the design and appearance of the dwellings have been provided, and these would need to be submitted for approval before the development could take place. However, I am satisfied that a design could be achieved which would be appropriate for the surrounding area and which would not cause harm to the living conditions of the occupiers of nearby dwellings. As the proposed dwellings would sit within a gap between existing dwellings and front onto Whitley Road, they would integrate well into the street scene, meaning that there would be no visual harm to the landscape or to the open countryside, or to the character and appearance of the area in general.
12. The proposal was subject to consultation with the Council's Ecological Advisor who raised no objection subject to a condition relating to ecological enhancements. I have no reason to consider that this would not be appropriate on the basis of the information I have before me. Any noise generated during construction would be a temporary occurrence and the noise levels generated by occupation of the proposed dwellings for domestic use would not be unacceptable in the context of the surrounding area. A hedge which was previously located along the site frontage has been removed, but it is advised that this was not protected.
13. The Highway Authority makes references to the undertaking of a speed survey on Whitley Road to demonstrate that the proposed achievable sightlines are appropriate to the 85 percentile speeds on the 30mph limit road. However, the speed limit on the road is not high and there are other drives serving existing properties on Whitley Road, many of which do not provide for vehicles to enter and leave in a forward gear. Given the size of the plots, internal vehicle turning would be possible at the appeal dwellings. As a whole therefore, the proposal would not result in an unacceptable impact on highway safety. Whilst additional trips would be generated, the number of movements associated with two new dwellings would not materially impact upon the surrounding highway network.

Conditions

14. Conditions relating to the submission of the reserved matters, the relevant time period for submitting these and for carrying out the development, and a condition confirming the approved plans, are necessary to provide certainty. Conditions with respect to land contamination and to ground investigation relating to coal mining are necessary to ensure that the development is undertaken in a safe manner.
15. Conditions relating to the removal of vegetation during the bird breeding season and an ecological design strategy are required to protect ecological interests and to ensure there is a net gain in biodiversity. Details of an electric vehicle charging point for each proposed dwelling are needed to meet with the objectives of Policy LP24 of the LPSP. It is necessary to restrict the hours of construction works, to protect the living conditions of the occupiers of nearby dwellings.

16. The Council's delegated report refers to the possible imposition of a drainage condition, but there is no evidence provided to suggest that this is necessary in the circumstances of the appeal proposal and therefore I do not impose it.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed.

Graham Wright

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: 101-101 01 Rev A.
- 5) No development shall commence until;
 - a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity and details of the scheme and its findings have been submitted to and approved in writing by the local planning authority, and;
 - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.
- 6) No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to the local planning authority.

- 7) No development shall commence until an ecological design strategy (EDS) addressing ecological mitigation and enhancement has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following.

- a. Purpose and conservation objectives for the proposed ecological works.
- b. Location (shown on appropriate scale plans) of specific make and model, or design, of habitat boxes, such as bat boxes, bird boxes and hedgehog refuges. Habitat boxes to be integral to new structures where appropriate.
- c. Details of how the design of boundary treatments will not obstruct the movement of hedgehogs.
- d. Planting schedule and planting plan showing the inclusion of native species of tree and shrub to be included within/at the boundary of the application area, and how this achieves the stated purpose.
- e. Details of maintenance.
- f. A timetable for the implementation of the EDS.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 8) Before the electrical system is installed into the dwellings hereby approved, a scheme detailing the dedicated facilities that will be provided for charging electric vehicles and other ultra-low emission vehicles shall be submitted to and approved in writing by the local planning authority. The scheme shall meet at least the following minimum standard for numbers and power output:

- A Standard Electric Vehicle Charging point providing a continuous supply of at least 16A (3.5kW) for each residential unit that has a dedicated parking space

Buildings and parking spaces that are to be provided with charging points shall not be brought into use until the charging points are installed and operational in accordance with the approved details. Charging points installed shall be retained thereafter.

- 9) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the

local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 7 days of the report being completed and approved in writing by the local planning authority.

- 10) Construction works shall take place only between 07.30 to 18.30 hours on Mondays to Fridays and 08.00 to 13.00 hours on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

-----End of Conditions-----