



Appeal Decision

Site visit made on 27 January 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2022

Appeal Ref: APP/X1355/W/21/3289081

Land to the rear of Attwood Terrace, Tudhoe Colliery, Durham

- 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 Neil Westwick (Lichfields) against the decision of Durham County Council.
 - The application Ref DM/21/01834/OUT, dated 15 March 2021, was refused by notice dated 29 November 2021.
 - The development proposed is 36 dwellings (amended scheme) including demolition of buildings (outline – all matters reserved except access).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the application site address from the Council's refusal notice as it is more precise than the application site address provided in the outline planning application form.
3. The application is submitted in outline with all detailed matters reserved apart from access. An indicative layout plan accompanies the application. I have taken this into account in terms of assessing the principle of residential development on the site.
4. During the course of the determination of the outline planning application the appellant reduced the number of dwellings proposed on the site from 37 to 36. The description of development in the banner heading above therefore reflects this change. This change formed the basis of the Council's assessment of the application. I have determined this appeal based on 36 dwellings being erected on the site.

Main Issues

5. The main issues are (i) the effect of the proposal on the character and appearance of the area/countryside including the setting of the Tudhoe Village Conservation Area; (ii) the effect of the loss of on-street car parking and the proposed access on the living conditions of existing residents; (iii) the effect of the proposal on highway/pedestrian safety; (iv) whether it would be possible to achieve a satisfactory surface water management system; (v) the effect of the development on ecology, and (vi) whether adequate provision would be made for affordable housing.

Reasons

Character and appearance

6. The appeal site is about 1.75 hectares and is positioned to the rear of terraced properties known as Attwood Terrace. Other than Nos 17-20 Attwood Terrace, which comprise a vacant convenience store, workshop and flat, and would be demolished to facilitate access into the site, the land is greenfield and undeveloped with its boundaries delineated by hedgerows. The amended indicative layout plan (i.e. 802-NLP SD-10.01 Rev P) shows the erection of 36 dwellings served off culs-de-sacs most of which would be detached and semi-detached. In order to achieve required visibility splays onto Front Street, the proposal also includes sixteen on-site car parking spaces to mitigate for the loss of displaced on-street car parking spaces for the impacted residents of Attwood Terrace.
7. The pattern of built development in this part of Tudhoe Colliery, and to the west of Front Street, is linear in form and comprises mainly long and unbroken terraces of properties with mainly spacious and long rear gardens set against open countryside. Along with other areas of countryside surrounding the appeal site, the site provides relatively open and undeveloped relief from nearby Tudhoe Village, thereby ensuring that there is no physical coalescence of the areas. The appeal site provides a soft and rural edge to the otherwise essentially uniform and straight built form on the west side of Front Street. Furthermore, and as part of my site visit, I was able to appreciate a more tranquil and peaceful setting to the rear of the terraced houses when compared to their fronts. Indeed, at the front of these dwellings there is more noise and activity associated with the main road. The aforementioned attributes add positively and distinctively to the character and appearance of the area.
8. In the context of the above, the proposal would include the demolition of existing buildings mid-way through an existing long terrace to facilitate the formation of an access road. This would unacceptably break up the regularity and rhythm of the pattern of development associated with the exiting terrace. The amended indicative layout plan shows the provision of a residents car parking area at the site entrance opening out into a housing estate of mainly detached and semi-detached dwellings. The car parking area would appear harsh and engineered at the entrance to the estate and the detached and semi-detached dwellings, with relatively shallow gardens, would appear as sprawling, out of character and incongruous additions in this area, failing to have regard to the sense of order, uniformity and long gardens that are associated with the closely related terraced dwellings on Front Street. I acknowledge that the layout plan is indicative, but it is the only plan that I have for the purposes of assessing whether 36 dwellings and associated development would be acceptable in principle on the site.
9. I acknowledge that planning permission has been approved for three detached dwellings on the southern boundary of the appeal site¹. As part of my site visit, I was able to see that one of these dwellings had already been constructed. This is a much smaller development when compared to the appeal proposal and is a form of backland infill between St David's Church Hall and The Black Horse public house. In comparison, the appeal site would not constitute a form of infill development: it would not include existing development on two of its

¹ Planning permission DM/18/03610/FPA

boundaries. The proposal would have the effect of extending existing and approved development to the rear of The Black Horse Pub by a significant extent to the north and, in this regard, I find that it would therefore have the effect of leading to an unacceptable coalescence of Tudhoe Colliery and Tudhoe Village. Furthermore, the pattern of the resultant development would be such that it would materially depart from the pleasing and characterful form of linear development that currently exists along Front Street. Owing to the amount and extent of proposed development, it would lead to significant encroachment into the essentially open and rural character of the countryside.

10. I do not consider that the approval of the three detached dwellings to the south of the appeal site justifies allowing 36 dwellings on the appeal. There was already an access to the side of the Black Horse Pub and this development constitutes a small and modest infill development of three dwellings. The appeal site and proposal are not directly analogous with the site and approved development on land to the rear of the Black Horse Pub.
11. The appellant contends that the proposal would not cause material harm to the character and appearance of the area as it would be backland development, closely aligned to the existing built edge to the settlement, and that existing and proposed planting would soften the effects of the development.
12. I acknowledge that the aforementioned harmful effects would be appreciated more from localised viewpoints including from the rear of existing residential properties off Tudhoe Lane, Front Street and from St David's Church Hall, and as a result of opening up the existing terrace of properties on Front Street to facilitate a new access into the site. There would be glimpses of the development from the start of the public footpath opposite Tudhoe Colliery Primary School, although from the rest of the public footpath network the site would be screened owing to intervening vegetation and fields.
13. While public views of the site would be relatively limited, this in itself does not obviate the need to achieve good design. The character of this part of Tudhoe Colliery derives from the buildings, layout and surrounding spaces as a whole, regardless of whether particular elements are very open to public view. While existing and additional planting would help to soften the proposed development, the proposed dwellings would still be noticeable from localised viewpoints. Given the quantum and location of the development proposed, this harm would be significant in character and appearance terms.
14. The above harm would be compounded in so far that the character of the rear of the terraced dwellings on Front Street is more tranquil and peaceful. The erection of 36 dwellings with associated pedestrian and vehicular activity would undoubtedly change the way that the area is experienced by existing residents. It would change from an area that is more peaceful and tranquil to one that is significantly urbanised and including increased pedestrian and vehicular activity.
15. For the collective reasons outlined above, I find that the proposal would conflict with the requirements of policy 6 of the adopted the County Durham Plan 2020 (CDP) and in particular criterion (b) which seeks to avoid coalescence of settlements and inappropriate backland development, criterion c) which seeks to avoid the loss of open land that contributes to the character of the locality, and criterion d) which permits development that is appropriate in terms of scale, design, layout and location to the character, function and form and the

setting of the settlement. I find that there would be unacceptable harm to the character and appearance of Tudoe Colliery and the countryside. While layout is a detail reserved for future consideration, the indicative layout does not demonstrate to my satisfaction that it would be possible in principle to erect 36 dwellings on the site in a manner that would constitute good design.

16. For the above reasons, I conclude that the proposal would not accord with the design, character and appearance requirements of policy 6 of the CDP or chapter 12 of the National Planning Policy Framework 2021 (the Framework).
17. In reaching the above conclusion, I have considered the location of the Tudhoe Conservation Area (CA). Taking into account the distance of the CA boundary from the appeal site, coupled with intervening buildings and vegetation, I do not consider that the proposal would cause harm to the significance of the setting of the CA. However, this finding is a matter of neutral consequence in the overall planning balance and does not alter or outweigh my conclusion on this main issue.
18. In addition, I have taken into account the fact that the evidence is that the buildings that would be demolished are currently vacant and appear to require some maintenance, upkeep and improvement. Nonetheless, in spatial terms these buildings contribute to the character of Front Street in terms of what is mainly unbroken long terraces. The removal of these building may deal with an immediate issue relating to vacancy and aesthetics, but there is nothing before me to suggest that the erection of 36 dwellings is the only way that these buildings could be improved. Furthermore, I am not aware that there is no potential at all to see them used again, with or without adaption or alteration.

Loss of on-street car parking, pedestrian/highway safety and use of access road

19. In order to achieve the required visibility splays in respect of the proposed new access road off Front Street, it would be necessary to lose a number of on-street car parking spaces associated with the use of existing dwellings. While in numerical terms this would be addressed as a result of the provision of dedicated residents' car parking areas on the appeal site, it is clear that existing residents have legitimate concerns about this part of the proposal in so far that unlike the existing situation, where they can park their vehicles directly outside homes, the indicative layout plan shows two residents' car parking areas in locations where there is limited surveillance from existing or proposed properties.
20. I therefore share concerns raised by some residents within Attwood Terrace and have not been persuaded (e.g. there are no alternative indicative layouts) that it would be possible, in principle, to locate new and dedicated residents' car parking areas where the potential for theft and vandalism would be acceptably minimised. Indeed, the indicative locations show car parking areas positioned at either the site entrance or shoe horned into the corner of the site and well away from principal windows where significant and regular surveillance might be a deterrent from a crime and vandalism point of view. Furthermore, and in the winter months and at night, use of these car parking areas may not be an attractive proposition for some motorists who may feel vulnerable factoring in limited surveillance and given the walking distances to existing residential properties.

21. For the above reasons, I agree with the Council that some residents may be reluctant to use dedicated resident car parking spaces on the appeal site, leading to increased and unacceptable on street-car parking demand pressures to the detriment of the living conditions of the occupiers of existing residents in the immediate area. In the absence of any indicative details showing that it would be possible to provide safe, convenient and attractive displaced resident car parking on the appeal site, I find that there is the potential for increased on-street car parking on the opposite side of Front Street which, in turn, would have the potential to interrupt the free flow of traffic, to impair vehicular sightlines in terms of traffic leaving the junction with the industrial estate, and for increased vehicular and pedestrian conflict at a point in the road where vehicles are turning and where the proposal shows that an existing pedestrian crossing would be removed.
22. For the collective reasons outlined above, I find that the proposal would lead to some unacceptable highway safety impacts. I note the email communication between the appellant and the Highway Authority dated August 2017, but this appears to relate only to the staggered junction arrangement. In any event, I have considered highway safety matters in the round and based on the evidence that is before me.
23. In reaching the above views, I am also cognisant of the fact that the proposal would include the loss of a workshop, convenience store and a flat. However, in respect of the workshop and convenience store, the appellant does not dispute the Council's comment that these uses would more likely have generated the need for on-street car parking during the day. I consider that it is likely that on-street car parking space demand for residents is likely to be higher in the evening when many residents would return home from work or other activities, and also at weekends.
24. Consequently, I do not find that the loss of existing commercial and employment uses within the terrace would make any meaningful difference to on-street car parking demand and pressure which, based on the photographs appended to the Council's appeal statement, dated Sunday 9 January 2022 and taken at 12.30 hrs, show significant parking occupying the frontage of Attwood Terrace and on the opposite side of the road near the industrial estate junction. This level of on-street car parking stress and pattern of parking activity is also evident in Google Street View imagery, dated November 2021. I also noticed car parking on both sides of Front Street as part of my site visit.
25. I recognise that the evidence is that existing on-street car parking spaces on Front Street are less than 2.4 metres in width. In this regard, there is scope to provide dedicated residents' car parking spaces which are accord with the more up to date size standard. However, this would not overcome my concern about the fact that I have not been persuaded that it would be possible to provide car parking spaces on the appeal site, along with all other proposed development, in a way that would be conducive to them being well used by residents, taking into account potential crime, vandalism and night time safety matters.
26. The Council has also raised concerns about the effect of the proposed access road in terms of noise and disturbance for those residents that occupy properties at Nos 16 and 21 Attwood Terrace. I do not doubt that the occupiers of these properties would notice a change to what is currently a more tranquil and quieter environmental character, particularly when using their rear

gardens. This is a matter that I have already addressed as part of the character and appearance main issue above.

27. Notwithstanding my conclusions about the effect of the proposal on character, it is of note that the proposed access road would include areas of landscaped verges separating the proposed access road from the side boundaries with Nos 16 and 21 Attwood Terrace. Subject to the inclusion of landscaping along these verges, to be considered at reserved matters stage, and the provision of improved boundary treatment, I do not consider that use of the access road would result in material harm to the living conditions of the occupiers of the neighbouring properties from a noise or disturbance point of view. Furthermore, any potential privacy issues could be suitably addressed by way of the submission and approval of landscaping and boundary treatment details at reserved matters stage.
28. For the above reasons, I conclude that while the proposed access road need not in principle cause material harm to the living conditions of neighbouring existing residents from a noise, disturbance or other living conditions point of view, the evidence is that the proposal would cause significant harm to the living conditions of existing residents in Attwood Terrace in respect of loss of on-street car parking spaces. In turn, this would likely lead to unacceptable on-street car parking competition between existing residents to the detriment of their living conditions and with the potential for additional car parking on the opposite side of Front Street (where there would be more surveillance of parked cars) with associated unacceptable highway and pedestrian safety impacts. In these respects, I am unable to conclude that the proposal would accord with the amenity and highway safety requirements of policy 21 of the CDP and paragraphs 111 and 130(f) of the Framework.

Surface water management

29. The appellant has committed to include a sustainable urban drainage scheme on site and states that this is a matter that could be addressed by way of the imposition of a planning condition. The appellant has submitted a drainage strategy and states that *'to prevent flooding during events which generate flows above the Qbar rate, attenuation will be provided on site to store flows up to and including the 1 in 100 year volume plus 40% for climate change. The exact method of storing these flows is yet to be determined, however it is anticipated that flows will either be stored in a basin sized for the 1 in 100 year plus 40% event, or in a combination of oversized pipes and above ground storage'*. It is proposed that surface water would flow to the north of the site where a SUDS basin and tanks would be located.
30. While it may be possible to incorporate appropriate surface water management facilities on site, the indicative layout does not show sufficient detail to reach a certain conclusion on this matter. This is a major development proposal and surface water drainage is not a specific reserved matter. It would be necessary, at this stage, to impose a planning condition relating to this matter but in order to determine whether it would be possible to provide a fully acceptable surface water management system, in combination with the erection of 36 dwellings, I find that it would be necessary to include indicative details such as basins, swales, filtration strips/drains, rain gardens in combination with landscaping and ecology on the site.

31. In the absence of more detail about this matter, including an acceptable level of detail relating to an amended indicative layout plan, I am unable to conclude that the proposal would have the potential to fully accord with the surface water management requirements of policy 35 of the CDP which states that *'the management of water must be an intrinsic part of the overall development'* and paragraph 169 of the Framework. In this case, I do not consider that there is enough information before me to impose a planning condition to deal with this matter. This is a matter that strikes at the heart of the acceptability of the principle of development on this site.
32. I recognise that, subject to the grant of planning permission, the site may be sold on and that a developer(s) may have different ideas in terms of surface water management on the site. However, that does not in itself obviate the need to ensure that, in principle, a suitable surface water management system could be provided on the site in association with the erection of 36 dwellings.

Ecology

33. The appellant has submitted an Ecological Impact Assessment (EIA) prepared by E3 Ecology Ltd. The Council contend that insufficient information has been provided to demonstrate appropriate levels of ecological mitigation necessary to minimise impacts on biodiversity and hence that there is conflict with policies 25 and 41 of the DCP. Policy 41 of the DCP states that *'proposals for new development will be expected to minimise impacts on biodiversity by retaining and enhancing existing biodiversity assets and features and providing net gains for biodiversity including by establishing coherent ecological networks'*.
34. The Council's principal concern is that an analysis of the proposal against the Defra 2.0 biodiversity calculator should have been provided as part of the EIA. However, such an assessment is provided as an appendix to the EIA and the appellant has indicated that while there would be some on-site bio-diversity provision, a residual off-set financial contribution to improve 0.4 hectares of species rich/neutral grassland in the ownership of the Council would be dealt with and addressed in respect of the completed planning obligation.
35. Notwithstanding the dispute between the main parties about this main issue, the submitted planning obligation includes a payment of £9,843.48 for bio-diversity enhancement. The Council comment in their appeal statement that *'the ecology team have been consulted on this matter and agree in principle to the figure stated'*. I have no reason to disagree with this view. In addition, I am satisfied that on-site mitigation measures detailed in section 'H' of the EIA would be capable of being dealt with by way of the imposition of a planning condition.
36. I conclude that subject to the submitted planning obligation being signed and dated, the evidence is that the proposal would meet the biodiversity and ecology requirements of policies 25 and 41 of the DCP and the Framework.

Affordable housing

37. The Council's concern in respect of affordable housing relates to the fact that an *'affordable housing statement'* has not been submitted as part of the outline planning application. Nonetheless, the evidence is that the appellant has indicated a willingness, both at application and appeal stages, to provide

affordable housing on the site in accordance with the 15% affordable housing provision requirement outlined in policy 15 of the CDP.

38. This is an outline application and layout and design details are reserved for a future date. Given the appellant's commitment to provide a policy compliant level of affordable housing on the site, I am satisfied that this is a matter that can be suitably controlled following the signing and dating of the submitted planning obligation.
39. Consequently, and subject to the submitted planning obligation being signed and dated, I conclude that the proposal would be capable of according with the affordable housing requirements of policy 15 of the CDP and the Framework. In respect of First Homes affordable housing, it has not been necessary for me to pursue this matter any further with the main parties as it would not alter or outweigh my overall conclusion on the main issues.

Other Matters

40. The proposal would boost the supply of homes in the area. Nonetheless, there is no evidence that the local planning authority is unable to demonstrate a deliverable five year supply of housing sites in the area, or that the Housing Delivery Test has not been met. In this context, I afford boosting the supply of homes in the area moderate weight in the planning balance. In addition, it is proposed to provide six policy compliant affordable homes on the site which is a social matter to which I afford positive weight as a material planning consideration.
41. There is no dispute that the site is in a sustainable location, although both this and the potential to complete the submitted planning obligation are matters of neutral consequence in the overall planning balance. The development would lead to construction employment, although that would be a short lived benefit. The provision of additional people living in the area would lead to increased economic activity, including additional support to existing facilities and services.
42. The other matters raised are clearly benefits that need to be weighed against the identified harms. In reaching my overall conclusion below, I have taken into account these benefits, but they are not of sufficient weight to alter or outweigh my finding that the identified harms are collectively significant and that the appeal should, on balance, therefore be dismissed.
43. The appellant has submitted a section 106 agreement. I have had regard to payments and covenants in such an agreement. The section 106 agreement has not been signed or dated. I have not pursued this any further with the main parties as a completed section 106 agreement would not overcome the harm identified in respect of my conclusions on the main issues.

Overall Conclusion

44. The proposal would be capable of being acceptable in terms of ecology, biodiversity, affordable housing, noise and disturbance effects associated with use of the access road, and in terms of preserving the setting of the Tudhoe Village Conservation Area. However, significant harm would be caused to the character and appearance of the area and the countryside. Furthermore, based on the indicative on-site car parking areas for resident car parking spaces lost on Front Street, the evidence is that this would likely result in increased on-

street car parking demand pressures on the main road to the detriment of the living conditions of the occupiers of existing residents and leading to associated unacceptable highway and pedestrian safety conflicts.

45. Consequently, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR