
Appeal Decision

Site visit made on 24 November 2021

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 March 2022

Appeal Ref: APP/P2935/W/21/3282765

Land east of the A192, Fairmoor, Morpeth, Northumberland NE61 3JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Apinder Ghura, Chan Commercial Ltd against Northumberland County Council.
 - The application Ref 19/01008/FUL, is dated 21 March 2019.
 - The development proposed is the construction of 58no. dwellings with associated landscaping, access and infrastructure works.
-

Decision

1. The appeal is dismissed, and planning permission is refused.

Application for costs

2. An application for costs was made by Mr Apinder Ghura, Chan Commercial Ltd against Northumberland County Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application originally provided for 61 dwellings however this was revised whilst under consideration by the Council to 58 dwellings with a re-positioned access. Although the Council failed to make a decision on the application, based on the Council's statement and correspondence, it is clear that the Council were considering the development on the basis of this revised scheme and so have I. This is reflected in the description in the heading above.
4. The address in the heading above is taken from the application form. Although, the Council's statement alleges a difference between this and appeal documentation that does not appear to be the case. Whilst I note that the Council used a more comprehensive description in their correspondence the address on the application form is sufficiently precise to adequately identify the location of the site.
5. The Council did not determine the application however they indicate that had they done so they would have refused planning permission. Their reasons being that the loss of employment land would not be appropriate, the site is in an unsuitable location for housing and that no affordable housing, infrastructure to support secondary school places or healthcare, nor open space and play areas would be provided. Furthermore, they consider that the proposal would be deficient in highway and pedestrian safety, accessibility and flooding aspects.

Main Issues

6. Based on the Council's notional refusal reasons, the main issues raised by this appeal are consequently:
- the effect of the development on the provision of employment land;
 - whether or not the site would be in a suitable location for housing development, having regard to the development plan;
 - whether or not future occupiers of the development would have access to open space and children's play facilities of an appropriate standard;
 - the effect the development would have on highway and pedestrian safety, with particular regard to visibility and offsite pedestrian routes;
 - whether or not the design and layout of the development would create a safe, inclusive and accessible environment for all users;
 - whether or not the development would provide an appropriate level and format of affordable housing;
 - whether or not future occupiers of the development would have access to suitable education and healthcare facilities and the effect the development would have on such facilities; and,
 - whether or not the drainage arrangements for the development would be adequate.

Reasons

Employment land

7. The site is presently an undeveloped field. Along with the adjacent site which contains a petrol filling station and a series of commercial buildings, it is allocated as an employment site under Policy Emp4 in the 2016 Morpeth Neighbourhood Plan 2011-2031 (MNP). It also forms part of a larger Employment Land allocation in the Castle Morpeth District Local Plan, 2003 (CMDLP), although much of that allocated land to the north and east of the appeal site has subsequently been developed for housing and those sites are allocated for such a use in the MNP. On the other side of the A192 from the site is another considerably larger undeveloped employment site, allocated in both the CMDLP and MNP and which the Council advise has Enterprise Zone status.
8. Development of the appeal site for housing would therefore be contrary to both MNP Policy Emp4, which allocates the site and its neighbour for industrial and business development, and saved CMDLP Policy ME1, which allocates the site, amongst others, for employment purposes. The CMDLP is of some age now but since its adoption the various assessments made in respect of employment land have effectively supported the inclusion of land including the appeal site either specifically or in anticipating the requirements for employment land in the Morpeth Area. Saved CMDLP Policy E1 which allocates employment land is out of date in respect of the subsequent housing development on part of the Fairmoor site.
9. The appellant points to what they consider has been a low take up of employment land in the former Castle Morpeth District area and that the annual average was notably lower than that of adjoining areas in the County, albeit that data was only up to 2009. I can appreciate that, extrapolating those figures forwards into the future, it would take a considerable time to develop the allocated employment land in the Morpeth area. However, whilst the allocation of the site has been longstanding I am also conscious that both the

adopted MNP and the emerging Northumberland Local Plan¹ (NLP) have allocations which include the appeal site for employment use.

10. Based on the MNP allocations there are relatively few options in terms of vacant sites for employment use in the Morpeth Area. The MNP considers it vital that existing employment areas in the town are retained in light of what it identifies as the loss of substantial parts of former employment land to the north and east of the appeal site.
11. The appellant no doubt has insight into employment land requirements and trends in the area. However, their commentary on existing and anticipated allocations and the evidence behind them is not supported by substantive or conclusive evidence that indicates that development plan allocations should be put aside.
12. The appellant's Marketing Report shows that the site was marketed between October 2018 and September 2021 with little interest being shown in the site. Two enquiries related to housing development. Another four were not followed up although there is very little information as to why. Whilst this evidence shows a very low level of interest in the site over a considerable period, the Report provides little more than a factual record with very little analysis including detailing any investigation into why enquiries were not followed up.
13. I am conscious that at least half of that period was during the COVID-19 pandemic when the economy and businesses may well not have been focusing on new development, relocating or expansion although there is no mention of this in the report. It is likely that this would have had some effect on interest in employment land for part of the marketing period.
14. I note that the marketing particulars did not state a price for the site which was 'on application'. The Marketing Report provided no commentary on the price, whether it was realistic, whether this changed or how this may relate to prevailing prices for employment land and consequently whether or not this had any role to play in levels of interest in the site. Whilst the Marketing Report goes some way as a reasonable indicator of interest in the site, I cannot agree with the appellant that it is the 'categorical' conclusion that the site would not come forward for employment uses.
15. Whilst other settlements in the wider vicinity may have performed different roles in their employment profiles and land requirements, the MNP nevertheless identifies a requirement for employment land in Morpeth, as does the emerging NLP. Other than allocated sites, there would appear to be limited scope for additional or alternative land given the constraints of Green Belt around the town which lends support for ensuring a strategic level supply of employment land for the life of the emerging NLP.
16. The land has been designated for some time and saved CMDLP Policy E1 notes its allocation from a previous document. The allocation in the MNP would also appear to be based on its previous allocation. The site has not come forward for employment use despite that considerable time period. It is inconclusive whether the adjacent Enterprise Zone site on the other side of the A192 will either use up all the demand over the next few years leaving the appeal site

¹ Northumberland Local Plan - Regulation 19 Draft Plan showing proposed main modifications and additional changes, 2021.

- undeveloped or become a catalyst for investment making the appeal site attractive for complementary or subsequent overspill development.
17. The Council too have provided little substantive evidence in support of their confidence that the particular site will come forward, as opposed to evidence supporting the quantity of land required in more general terms. Nevertheless, the site's location and configuration would appear to be suitable for a range of employment uses, particularly given its proximity and ease of vehicular access to the A192, Morpeth Northern Bypass and A1.
 18. I can appreciate that the proximity of new houses to the north and particularly the east will have some limitation on the types of uses and activities that will be suitable as well as the configuration of any future employment development on the site. Nevertheless, the site is of a size which could support a variety of employment uses including both those which could take place in or close to residential areas and those which could be laid out in such a way as to locate activities that may give rise to disturbance farther away from residential properties. The site does not, therefore, appear unsuitable in principle in terms of its situation and location for employment use.
 19. Although the Employment Land Review was carried out in 2011, subsequent studies including the Employment Land Technical Paper² of 2018 have not considered an alternative to the allocation of the appeal site. Indeed, it was recommended that the allocation be carried forward into the draft NLP. Although the appellant considers that the three years since its publication makes it out of date, other than the appellant's Marketing Report, which considered demand for the particular site, there is no substantive evidence that the Technical Paper is of an age that it cannot largely be relied upon.
 20. The appellant's evidence falls short of conclusively demonstrating that there would be no reasonable prospect of an application coming forward for a use for which it is allocated in the MNP. Bearing in mind the Council's housing land supply position, it cannot be concluded that the proposed use would contribute to meeting an unmet need for housing development in the area. Consequently, it has not convincingly been demonstrated that the circumstances that paragraph 122 of the National Planning Policy Framework (the Framework) sets out in light of changes in demand have been reached.
 21. Main modifications to the draft NLP were published in June 2021 and as such it is at a relatively advanced state of preparation. I note that the examining Inspector's comments did not relate to allocation of the site and the main modifications do not propose a change to the allocation, albeit I do not have information on outstanding objections. Nevertheless, there would appear to be some confidence that the site will appear as an allocated employment site in the emerging NLP albeit until that plan reaches adoption that cannot be certain.
 22. The modifications provide a flexible approach to employment generating uses at para 5.49, and reflecting changes in the Use Classes Order, does not limit them to 'B-Class' uses but as main employment uses. The adoption of the NLP in this form would be likely to create a more flexible policy for employment development on the site than the more limited CMDLP allocation and this may have the potential to attract a wider range of interest in the site.

² Northumberland Local Plan - Publication Draft Plan (Regulation 19): Employment Land: Strategy Considerations and Assessment of Sites Technical Paper, 2018

23. Draft NLP Policy ECN 10 provides for the loss of employment land for other uses including housing where, amongst other criteria, there is no reasonable prospect of an application coming forward for employment use. However, an exception to this is where policies in made neighbourhood plans provide specific controls or limitations on the use or development of land for employment generating uses. MNP Policy Emp4 allocates the site for industrial and business development and that hotel and roadside services will be supported. This implicitly, if not explicitly, provides a specific limitation on uses, albeit that other permissions may mean the latter could be less likely. Consequently, it cannot be assumed that even if the first part of draft NLP Policy ECN 10 were satisfied that the development would be acceptable given the site's MNP allocation.
24. It remains, however, that substantial parts of the former extent of the CMDLP allocated employment site were given planning permission for housing development. Nevertheless, the Council point to a different housing land supply situation at the time and the role of housing as enabling development in association with the adjacent hospital. Those are materially different circumstances to the appeal proposal.
25. Considering that the site is allocated in the development plan for employment uses and indications are that it is likely to remain so in the emerging plan, on balance the case for releasing the site to alternative uses at this stage is not persuasive.
26. These considerations do not provide a convincing reason to determine the proposal other than in accordance with the development plan and the conflict with MNP Policy Emp4 carries considerable weight.
27. Policies in the CMDLP are now quite old and the evidence base on which they would have been based will be out of date. Nevertheless, the pertinent issue of the allocation of the appeal site for employment land has been carried forward into the MNP and appears likely to be allocated in the adopted version of the NLP. Therefore, whilst the CMDLP is dated, conflict with saved CMDLP Policy ME1 still carries moderate weight in these circumstances.

Suitability for housing

28. The proposed housing would be outside the settlement boundaries set out in the MNP and CMDLP. MNP Policy Set1 and saved CMDLP Policy C1 defines settlement boundaries and treats development outside them as being in the countryside for policy purposes. The development of housing would not meet any of the exceptions that MNP Policy Set1 sets out and the development would consequently be contrary to that Policy. Similarly, the development would not accord with saved CMDLP Policy H16 which only permits housing in the countryside in particular circumstances, none of which reflect those of the appeal proposal.
29. The weight which can be attached to conflict with saved CMDLP Policy H16 is reduced somewhat given the age of that plan and housing figures it will have been based on. Furthermore, it does not fully accord with the Framework's approach to new dwellings in the countryside. Nevertheless, conflict with the more recent MNP carries considerable weight.

30. My findings on employment land mean that there is not a demonstration that the site is not required for its allocated purpose. It is not a matter of dispute between the main parties that the Council has a five years supply of deliverable housing sites. Whilst there are recent housing estates bounding the site on two sides, material considerations do not indicate that development contrary to these Policies would be acceptable.

Open space and children's play facilities

31. The proposed site layout does not indicate any designated area for children's play. Much of the non-developed land would be limited to modest slivers of incidental planting adjacent to roads or parking, and not suitable for any recreation or play purposes. The only exception is a plot in one corner which would serve as a Sustainable Urban Drainage System (SUDS) 'basin'. Its margins and access around it would provide a limited area of open space but due to its size, situation, configuration and function would not be fit for purpose for anything more than limited informal recreation purposes and certainly not suitable for children's play.
32. The layout does not provide any direct pedestrian linkages into adjoining housing sites. The more generous open spaces on the St Andrews Gardens development immediately adjacent to the appeal site boundary would require a convoluted route to access. Proposed gardens would be small, including some serving mid- terrace houses being extremely compact.
33. Future occupiers would not have any immediate access to open space of an appropriate size or configuration, and any children would not have access to any suitable play spaces close to their homes. For reasons set out below, shared surface areas within the estate would not provide an alternative. Consequently, the development would not provide acceptable living conditions, nor health, wellbeing and quality of life opportunities arising from open and play space, for future occupiers in this respect.
34. Although the appellant has indicated a willingness to make a contribution towards off-site open space provision, no mechanism to do so has been provided and this cannot carry any weight in support of the proposal.
35. The development would be contrary to MNP Policy Hou5 which requires housing development to make provision for, or contributions towards, children's play areas, open space, playing pitches and allotments, amongst other infrastructure. It would also be contrary to saved CMDLP Policy H15, criterion xv.'s requirement that open spaces and children's play areas be included in all residential developments of ten dwellings or more.

Highway and pedestrian safety - visibility

36. The proposed vehicular access would be situated relatively close to a right-angled bend in the road to which it would join. This road serves Northgate Hospital and the adjacent St Andrews Gardens housing estate. Although that road also has another sharp bend around the corner which may slow vehicles travelling south, it will nevertheless be well used. Given the proximity of the proposed access road, changes in levels between the road and the site and this geometry of the road it is not certain that there would be sufficient sightlines to enable vehicles leaving the site to do so safely in the knowledge that there was

not an oncoming vehicle approaching at an unsafe speed or distance from their right.

37. No visibility splays have been indicated for the proposed access but from the information available it would not appear certain that the minimum longitudinal 'Y' component of sightlines to the north of the site the Council require could be achieved given the proximity of the bend and intervening impediments. The appellant's Transport Statement relates to the previous layout where vehicular access would have been taken from the roundabout and relative site and road levels, as well as visibility, will have been materially different.
38. In the circumstances it has not been demonstrated that conditions would exist where vehicles leaving the site or those travelling south towards the site entrance would not be put at risk. The consequences of this would be an unacceptable impact on highway safety, a situation where the Framework at paragraph 111 identifies that development should be prevented or refused. In these circumstances it would not be appropriate to leave the demonstration of achieving a safe visibility splay to a planning condition given how fundamental this would be to the acceptability of the scheme.
39. Although the large radii proposed at the access junction would contribute to a car dominant character and appearance at the entrance to the proposed housing estate, it would not necessarily create a hazard. It would mean that pedestrians walking along the footpath would have to walk farther into the estate to cross at a narrower carriageway width point. This is not ideal as it would, albeit in an incremental way, contribute to a car dominated environment where pedestrians would perceive they have to take second place to vehicles and the potential for walkers to take a risk of crossing the bell mouth at its widest point. Nevertheless, this shortcoming on its own would not give rise to an unacceptable impact on safety provided suitable pedestrian crossing arrangements could be implemented.

Highway and pedestrian safety – pedestrian and cycle access

40. The only pedestrian and cycle route to facilities farther away in the town centre without crossing a main road would be along the footway to the front of the site which is proposed to be improved to include a cycleway. This would require pedestrians and cyclists to traverse the two vehicle accesses serving the filling station, grocery shop and the various commercial uses on the adjoining site. There is the potential for conflict between pedestrians and cyclists with vehicles entering and leaving those facilities. The current situation prioritises vehicles by way of the geometry of the vehicle entrances, lack of clear crossovers and patchy surfacing. There is no proposal for any offsite works to improve either the physical condition of the cross overs of these two accesses nor any measures to help reduce the potential conflict with pedestrians and cyclists.
41. That being said, both pedestrians, cyclists and drivers are afforded good visibility of one another, although pedestrians and cyclists need to be wary of vehicles turning into the site from both sides. Whilst the current situation is not ideal, there will no doubt be existing users who walk that way and no evidence that this has caused serious incidents. Were the situation to remain as it is there would not be an unacceptable impact on safety in this respect.

Design and layout – safe, inclusive and accessible environment

42. The proposed layout of the housing of slightly staggered rows of houses many of which would be along straight roads lined by perpendicular parking spaces would create an uninspiring layout with a monotonous streetscape, dominated by roads and parked cars. The number of parking spaces arrayed on either side would limit the opportunity for on road parking and it is possible that drivers may be encouraged to progress along these straight stretches at speeds greater than would be appropriate for a housing estate.
43. However, there would be footways on either side of these roads and therefore sufficient provision for pedestrians to avoid conflict with vehicles. Although the Council advise that these stretches are 'too long' they do not identify what standards might be breached in this regard. Nevertheless, the design and layout of the proposed estate would not create a built environment where drivers would instinctively adopt a cautious and slow approach, relying instead on physical traffic calming features within the carriageway.
44. The Design and Access Statement does not explore why it has not been possible to link in with routes and open spaces on adjoining housing estates. The development would be isolated from them and turn its back on the open space at St Andrews Gardens. The shared surface road to the front would appear to link to both other estate roads to create a vehicular circuit. This may mean that it is used as the most convenient vehicular route for some occupiers and consequently far less attractive as a shared surface area for all users. Furthermore, the cycle and pedestrian link to the main road at the south of the site is rather awkwardly configured such that it may be unclear whether motor vehicles or cyclists would have priority.
45. Although cycle stores are proposed for all houses some of those, particularly those serving mid-terrace dwellings, have long, narrow and convoluted routes alongside neighbours' rear gardens. This inconvenient arrangement has the potential to dissuade occupiers from using cycles as an alternative to cars.
46. By themselves these aspects may not necessarily create an unsafe environment for pedestrians and cyclists. However, along with the shortcomings in design identified in respect of junction geometry and offsite pedestrian and cycle accessibility, together they demonstrate a compromised layout and design that would deter future occupiers to choose to use alternatives to private cars. The large swathes of streets lined with parked cars with little relief would not create an environment that would feel well connected, accessible nor inclusive to all ages and abilities.
47. The development would not reflect the Framework's requirement at paragraph 112 that developments should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas. Neither that they should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles. The development would conflict with MNP Policies Des1, Tra3 and Hou5 which together, and amongst other criteria, seek to ensure that developments' layout and design takes account of the potential users to provide safe, convenient and attractive links within the development and to existing networks, and makes provision for, and improvements to, pedestrian and cycle routes. It would also conflict with criterion x. of saved CMDLP Policy H15's requirement that layouts

should prioritise pedestrian and cyclist circulation and must not be highway dominated.

48. Given that many of these shortcomings are inherent in the proposed layout they are not matters which could be satisfactorily addressed by way of planning conditions.

Affordable housing

49. The original application proposed only market housing. However, the appellant has subsequently indicated their willingness to provide a planning obligation which would secure on site affordable housing, albeit no such planning obligation has been received. Any benefit that may have arisen from the provision of affordable homes could not therefore be secured and can carry no weight in support of the appeal.
50. The development would provide a mix of two-, three- and four-bed homes in detached, semi-detached and short terrace configuration. Although no Tyneside flats or bungalows are proposed, the development would be able to provide the 5 two-bedroom and 1 four-bedroom units that the Council request, and thus could go some way to providing affordable housing reflecting the Council's size, if not format, requirements. Furthermore, I note that the Council advise that Registered Providers active in the area have stated an interest in two- and three-bedroom units for affordable rent.
51. Although there is evidently a demand for two-bedroom bungalows from Registered Providers and it is important that affordable housing meets the needs of those who require it, I am also conscious that the Framework's definition of affordable housing is a wide one and not limited to affordable homes to rent. It is not certain that the Council's identification of an oversupply of two and three bed affordable rent units would necessarily mean that homes of that size may not be appropriate in alternative affordable housing tenures. Also, the Council point out that the Partial Strategic Housing Market Assessment Update³ (SHMA) nevertheless still identifies a requirement for affordable three and four bed houses, albeit in considerably lower numbers than smaller dwellings.
52. The SHMA also anticipates approximately half the need for affordable homes would be for flats and bungalows. This is based on a 2012 profile of existing stock and it finds it 'a reasonable expression' of required types which reflects an aging population. However, this does not necessarily equate to demonstrating that other formats would be unsuitable in this case.
53. The Council concede that it is difficult to gauge demand for discounted market value housing and there is little evidence to suggest that the configuration proposed would be unsuitable for that type of tenure. Overall, the evidence that the proposed house types would be unsuitable for other forms of affordable housing is limited and on the basis of the information available it is not certain that the development would necessarily provide house types unsuitable for affordable needs in a range of tenures.
54. Nevertheless, this is rather academic as the appellant has not put forward any detailed proposals about tenure nor, in any event, any mechanism to secure

³ Northumberland County Council Partial SHMA Update 2018, Final Report, 2018.

any affordable housing. The development would be contrary to MNP Policy Hou4 which requires on site affordable housing.

Education and healthcare facilities

55. Despite the appellant indicating a willingness to make financial contributions of an amount matching the Council's requirements for secondary education and primary health care provision by way of a planning obligation, none has been provided. This would mean that future occupiers may not have appropriate access to education or health facilities and that those facilities that there are would be put under strain to the detriment of all users. In the absence of a mechanism to secure such contributions the development would be contrary to MNP Policy Hou5. This requires housing development to provide or make contributions towards community facilities and schools, amongst other community and infrastructure requirements.

Drainage

56. The application intended surface water to be disposed of by way of a SUDS however the appellant's Flood Risk Assessment and Drainage Strategy proposed discharge to a highway drain with a combination of the SUDS basin and oversized pipes to manage any exceedance storm flows. The Council consider that the highway drainage is not designed for such a purpose and would be unsuitable. However, the Council have suggested an alternative with discharge into an existing watercourse or failing that demonstration that highway drainage may be able to accommodate surface water flows with particular caveats.
57. It has not been suggested that the development is incapable in principle of being satisfactorily drained albeit the most appropriate solution has not been identified. The detailed scheme could be required by way of a planning condition. This would ensure that it can be demonstrated that the scheme accords with the hierarchy of preference set out in MNP Policy Inf1 along with its other detailed requirements for run-off and discharge rates.
58. There is nothing before me to suggest that any scheme seeking to discharge such a condition would override the Council's or other statutory undertakers' responsibilities with regards to ensuring the proper function of highway or other drainage. As the development would be in Flood Zone 1, saved CMDLP Policy RE5's sequential approach is less pertinent in this case.

Planning balance

59. The development would bring some benefits in light of the Framework's recognition for support for the Government's objective of significantly boosting the supply of homes. There would be time limited economic benefits during construction and longer-term ones from future occupiers' contributions to the local economy. The scale of development proposed would mean that these benefits would be of a moderate extent.
60. However, the weight that such benefits carry would be reduced given the shortcomings in the quality of the environment that the scheme would deliver. Given the housing land supply position there is not particular pressing need for housing to be delivered on this site to assist in housing delivery in the County. For the reasons set out about affordable housing, although an intention, could not be secured and cannot carry any weight. Overall, the benefits of new

housing on the site would carry modest weight. Avoidance of harm in respect of drainage, some aspects of pedestrian safety and other matters would be a neutral consideration.

61. Nevertheless, this would be greatly outweighed by the harm arising from: the loss of employment land; conflict with development plan policy for the location of housing; lack of appropriate open space or any play provision; harm to highway safety; not providing a safe, inclusive and accessible environment; a lack of affordable housing; and a lack of mitigation in terms of additional pressures on health and education infrastructure.
62. Although it cannot carry the full weight of an adopted development plan, conflict with the emerging NLP in terms of its provisions for employment land are nevertheless a material consideration and, in this respect, carries considerable weight in light of its relatively advanced stage of preparation.

Conclusion

63. The proposal would conflict with the development plan taken as a whole. Material considerations do not indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Geoff Underwood

INSPECTOR