



Appeal Decision

Site visit made on 28 February 2022

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 30th March 2022

Appeal Ref: APP/N1350/W/21/3286318

Newton Grange Farm, Stockton Road, Sadberge, Darlington

- 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 B Miller of Wynyard Homes against Darlington Borough Council
 - The application Ref 20/00891/FUL, is dated 29 September 2020.
 - The development proposed is erection of 25 no dwellings including 20% affordable (5 no. units).
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Decision

1. The appeal is dismissed and planning permission for erection of 25 no dwellings including 20% affordable (5 no. units) is refused.

Procedural Matters

2. 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. Whilst the Council did not issue a decision notice, it confirmed in its statement of case that it would have refused permission for the proposed development for four putative reasons. These were in relation to: i) the location of the site outside of defined development limits; ii) effects on the setting of Sadberge Conservation Area; iii) effects on the character and appearance of the area; and iv) a failure to demonstrate net gains for biodiversity.
3. The proposed layout plan (2023.P.01) was amended numerous times during the application process, with the latest plan (revision F) submitted in October 2021 prior to submission of the appeal. I am satisfied that the relevant consultees had the opportunity to make comments and my decision is based on revision F.
4. Since the submission of the appeal, the Darlington Local Plan (DLP) February 2022 has been adopted. The Borough of Darlington Local Plan 1997 and the Darlington Borough Core Strategy 2011, which are cited in the Council's putative reasons for refusal, no longer form part of the development plan and I make no further reference to them in my decision. Both parties were given the opportunity to make representations following the adoption of the DLP.

Main Issues

5. The main issues are:

- whether the proposed development would be in a suitable location for housing having regard to the development plan and national policy;
- the effect of the proposed development on the character and appearance of the site and the surrounding area;
- the effect of the proposed development on the setting of the Sadberge Conservation Area; and
- whether net gains for biodiversity would be adequately secured as part of the proposed development.

Reasons

Location

6. The appeal site is situated outside of the development limits of the village of Sadberge as shown on map 4 of the DLP, and is therefore situated in the countryside. The supporting text to DLP Policy H3 explains the purpose of development limits in helping to preserve the distinctive identities of existing settlements, protect the open countryside between settlements and preserve the countryside's intrinsic character and beauty.
7. DLP Policy H7 supports new permanent dwellings in the countryside only where the proposals meet a number of exceptions criteria, which are reflective of national policy relating to rural housing set out in paragraphs 78 to 80 of the National Planning Policy Framework (the Framework). There is insufficient evidence before me to demonstrate that any of the criteria within Policy H7 would be met by the appeal scheme.
8. Furthermore, Policy SH1 confirms that Sadberge is a 'rural village' within the settlement hierarchy. This states that on the edges of rural villages, housing development will meet clearly identified local needs, recognising that an element of open market housing may be required to deliver essential affordable units. Whilst the site is closely related to development limits, there is a lack of information before me to indicate that the proposed development would meet local needs. The proposals have not been put forward as a rural exceptions site (DLP Policy H6).
9. The Council can currently demonstrate a 5.3 year supply of deliverable housing land. This differs markedly from the previously published figure of 17 years¹. Nonetheless given the very recent adoption of the DLP, and lack of evidence to suggest that the supply has fallen below 5 years, paragraph 11 of the Framework is not triggered.
10. The site is located within easy reach of local services, and on my site visit I noted the existence of a footway leading the short distance into the village centre. Nonetheless the accessible location of the site does not in itself justify the development of a greenfield site which is contrary to the newly adopted development plan.

¹ As at 1 April 2021

11. To conclude on this main issue, I find that the location of the proposed development beyond the development limits of the rural village of Sadberge is contrary to DLP Policies H3, H7 and SH1 which together seek to restrict inappropriate and unsustainable development in the countryside.

Character and Appearance

12. The appeal site comprises a grassed field bounded on three sides by existing vegetation with the east side continuing into a larger open field. Gardens of modern detached dwellings situated on Abbey Road are separated from the site by an access track and an area of open play space. Elsewhere the site is surrounded by an arable landscape, with the A66 dual carriageway bypassing the village to the south. The site assists in the transition of the village to the rural landscape beyond. On my site visit I found that there is a clear distinction between the eastern end of Stockton Road with its more verdant and rural appearance, and the built up area of the village demarked by the 30mph speed limit and dwellings which have direct access to Stockton Road.
13. DLP Policy DC1 requires the design of new development proposals to demonstrate that they reflect the local environment and create an individual sense of place with distinctive character and to respond positively to the local context. It seeks for the layout to complement and enhance the character of the environment, retaining existing features of interest. More detailed guidance on design principles is contained within the Council's Supplementary Planning Document 'Design of New Development' (the Design SPD). In particular, part 4.5 refers to local distinctiveness.
14. I concur with my colleague² that, spatially, development on the appeal site would 'round off' development on this side of the village between existing development and Stockton Road. However, the openness of the eastern boundary would give rise to longer range views of the site. The existing mature front boundary hedge currently provides a good level of screening, but much of this would be removed to enable the proposed access and required visibility splays. Whilst landscaping could be secured by condition, there is limited space for planted screening and a 'hard' edge to the development would ensue from both the dwellings and the acoustic fence.
15. I acknowledge that there are modern dwellings in the vicinity of the site which are of varying designs. However the submitted design and access statement fails to identify the local context, nor does it explain how local distinctiveness and the surrounding landscape has been considered within the design. The layout appears to respond to the constraints of the site and the location of the access rather than an attempt to provide a sympathetic transition to the countryside beyond, nor does it form an attractive 'gateway' into the village.
16. The development would be inward-facing, with the public view from Stockton Road being dominated by the relatively featureless side elevations of the nearest dwellings. A number of visitor car parking spaces within the area of green space to the front would also disrupt what could otherwise be a pleasant entrance to the site.
17. The Council has referred to a nearby site where the appellant has used identical house types. The details of that scheme are not before me,

² APP/N1350/W/19/3240897

nonetheless the use of generic house types weighs against this proposal where a high standard of design and use of vernacular detailing would be expected in this edge of settlement location.

18. I therefore find that the design and layout of the proposed development would result in harm to the character and appearance of the site and its surroundings, contrary to DLP Policy DC1 and the Design SPD, together with national policy set out in section 12 of the Framework and the National Design Guide which seek to achieve well-designed places.

Conservation Area

19. In compliance with my statutory duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Sadberge Conservation Area (CA).
20. The CA is centred around the historic core of the village of Sadberge. Its rural hilltop location containing a church, public house and traditional cottages and farmhouses grouped around wide green verges contribute to its significance as a whole. The character of the CA evidently alters towards Stockton Road and Norton Road, where mid to late 20th century housing development is located. Here the land lies downhill from the centre of the village, beyond what is described as 'the triangular field', an undeveloped area which positively contributes to the significance of the CA.
21. Glimpses of a small number of buildings within the CA from the eastern end of Stockton Road are possible. However the gently sloping landform and boundary vegetation of the triangular field give the central historic core of the village in the CA a clear visual separation from the appeal site and nearby modern housing development. Consequently, I agree with my colleague's comments in the previous appeal decision that the appeal site does not perform a significant function as a gateway to the CA. I consider the contribution it makes to the significance of the setting of the CA is neutral.
22. Whilst I have found that the design and layout of the proposed development would result in harm to area character and appearance, I do not consider that this harm would extend to the setting of the CA given the lack of inter-visibility. As such, the character or appearance of the CA as a whole would be preserved.
23. The proposal would comply with DLP Policy ENV1(b) in terms of its effects on the setting of the CA. It would also accord with Chapter 16 of the Framework regarding the strong level of protection it affords designated heritage assets, including that great weight should be given to the asset's conservation.

Biodiversity

24. The evidence before me suggests that the habitat conditions of the site and its surroundings, including the presence of a pond and boundary vegetation, have potential for the presence of species protected under the Wildlife and Countryside Act 1981 (WCA) and the Conservation of Habitats and Species Regulations 2017. I have a duty to consider the extent to which the presence of protected species may be affected by the proposed development before planning permission is granted.

25. To facilitate the access and visibility splays on Stockton Road, the pond and a range of boundary vegetation would need to be removed. The appellant has submitted a range of documents³ to support their proposals in this respect. Whilst the original ecological report is now over three years old, update walkover surveys were carried out more recently and noted no significant change. I am satisfied that the site is of low ecological value, being dominated by improved grassland. I acknowledge that the pond has the potential to provide a habitat for great crested newts, however the surveys found it to be of 'poor' suitability to support this particular species. The Council have raised no concerns in this respect. In the absence of definitive recent information to the contrary I am satisfied overall that there is sufficient information to establish the presence of protected species. If I were to allow the appeal, it would be reasonable to impose a condition requiring an updated walkover survey and a finalised ecological management plan to be submitted prior to commencement of development in the event of permission being granted.
26. DLP Policy ENV8 expects development to demonstrate an achievement of biodiversity net gains (BNG) using the Defra Biodiversity Metric. If on-site provision is shown to be insufficient, off-site compensatory measures may be sought where justified. No assessment of BNG, nor a landscape plan to identify the areas for habitat enhancement creation, were submitted as part of the planning application. Furthermore, provision of 10% BNG is now mandatory as part of the Environment Act 2021. A document⁴ has since been put to me as part of the appeal in response to these requirements.
27. The document includes the application of the Biodiversity Metric 3.0 which confirms that the proposed scheme would result in excess of 10% BNG: a 17.63% gain on habitat units and a 20.41% gain on hedgerow units. A landscape plan for BNG is also included to indicate the areas of the site which would accommodate the planned biodiversity enhancements.
28. I am satisfied that the additional information adequately demonstrates that proposed development would not result in an overall net loss of biodiversity. An exceedance of 10% BNG could be achieved on site through implementation of the landscape plan, subject to an appropriately worded condition to secure the detail of the proposed pond and planting together with details of appropriate future management. As such, the proposed development would be in compliance with DLP Policies ENV7 and ENV8 which expect development to minimise the impact on and provide net gains for biodiversity, avoid or mitigate adverse impacts upon protected species, and to provide adequate compensation measures on site. In turn, the proposal would also be in accordance with paragraphs 174(d) and 180 of the Framework.

Other Matters

29. A number of appeal decisions have been put to me. The decisions all have limited bearing on my decision given that they are for varying scales of development in different locations, and they are in the context of the previous development plan.

³ Preliminary Ecological Appraisal Report (June 2018), Tree Survey Report (August 2018), Outline Ecological Management and Monitoring Plan (December 2020)

⁴ Appendix 1, Response to LPA's Case December 2021 – Biodiversity Metric 3.0 and Landscape Plan for Biodiversity Net Gain

30. Numerous other matters have been raised by local residents. As I am dismissing the appeal on the main issues for the reasons given above, I have not addressed these matters further. No details have been provided regarding the Sadberge Plan as mentioned by the Parish Council. It does not appear to form part of the Development Plan therefore I have not made reference to it in my findings.
31. The appellant has submitted a completed and signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. It includes an obligation relating to a sustainable transport contribution which was requested by the Council's Transport Planning Manager and is supported by the Council's SPD on Planning Obligations. Notwithstanding the lack of comments from the Council on the UU, I am satisfied this obligation would meet the tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) and reiterated at paragraph 57 of the Framework ('the tests').
32. The description of development refers to five affordable housing units (20% as required by DLP Policy H5). However the provision of such housing is not shown on the site layout plan nor secured as part of the UU. Instead, a condition is suggested by both parties for a scheme to be submitted. Even if I were minded to allow the appeal, such a condition is unlikely to meet the tests set out in paragraph 56 of the Framework. I am therefore unable to take the provision of affordable housing into consideration in the planning balance.

Conclusion

33. I am in agreement with the appellant that the proposed development would preserve the character or appearance of the Sadberge CA, and it would meet local and national requirements for BNG. Nonetheless, I have found that the proposal would conflict with the DLP in terms of its location in the countryside and would harm the character and appearance of the site and its surroundings. This harm would not be outweighed by any benefits including those secured by the UU and the stated generic economic and social benefits, even when taken together. The proposal conflicts with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given, and having had regard to all other matters raised, the appeal is dismissed.

Susan Hunt

INSPECTOR