



Appeal Decision

Site visit made on 3 May 2022

by Mrs C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2022

Appeal Ref: APP/W0734/W/22/3292244

**Acklam Iron And Steel Works Athletic Club, Park Road South,
Middlesbrough TS4 2RD**

- 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 Acklam Developments Ltd against the decision of Middlesbrough Council.
 - The application Ref 21/0324/OUT, dated 24 April 2021, was refused by notice dated 6 December 2021.
 - The development proposed is described as outline application for 51 No houses.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was made in outline with all matters reserved for future consideration. However, the appeal submission confirms that access to the site would be through an adjoining permitted housing development and the decision notice refers to highway matters and the appeal is examined on that basis. I have treated any other details shown on the plans as illustrative.
3. Natural England has published advice on nutrient neutrality subsequent to this appeal being made. The Council has advised that this is applicable to the appeal proposal. This is addressed later in this Decision.

Main Issues

4. The main issues are the effect of the appeal proposal on:
 - future playing field provision
 - flood-risk
 - highway capacity and safety

Reasons

Playing pitch provision

5. The appeal site forms part of an overgrown grassed area associated with a social club. This land, the social club building, hard standing areas and remaining playing fields are allocated by Policy H33 of the Middlesbrough Housing Local Plan ("the MHLP") for 30 dwellings. This policy states that an area of the site allocation will be retained for sport and recreation use to be laid out as a senior pitch, with the provision of changing facilities. This policy also

requires the reprovision of a junior pitch elsewhere within the town. The original social club building and some of the outdoor space associated with it currently has the benefit of planning permission for residential development and a new club house. At the time of my site visit the latter was under construction. The Council has confirmed that the permitted scheme sought to retain sports provision within the appeal site.

6. The appellants state that the appeal site was last used as a pitch more than 5 years prior to when they sought planning permission for the appeal scheme. In view of the position set out in Decision APP/W0734/W/18/3212164 ("the 2018 Decision") and the existing overgrown condition of the appeal site, there is no basis to dispute that. Nonetheless, as the land is required for use as a playing field in the MHLF Sport England are a statutory consultee on this proposal and their Playing Fields Policy is applicable.
7. The appeal proposal does not meet any of the exceptions set down in Sport England's Playing Field Policy. That national body's objection is because of the failure of the appellant to provide any clear solution to secure suitable off site reprovision. This is set in a local context of an identified deficit of football pitch provision during the peak demand period which will be further exacerbated by planned housing growth as the development plan for the area is implemented. This carries considerable weight against the appeal proposal. Crucially, the culmination of the existing national and local policy context means that playing fields such as the appeal site remain protected unless there is a surplus of playing pitches across all pitch sports and age groups both at the present time and across the timeframe of the area's Playing Pitch Strategy ("the PPS").
8. The Council's PPS confirms notable shortfalls within the plan period, including a significant shortfall of junior pitches and a surplus of adult pitches in this locality. It therefore recommends that existing shortfalls are addressed prior to factoring in any other playing fields from being lost in the Council area. The limited evidence provided by the appellants in respect to current local provision, including the alleged underuse elsewhere and criticisms of other decisions, carries very limited weight. This is because the PPS relates to all sites regardless of ownership and has been prepared in accordance with Sport England's nationally based methodology and input.
9. It is clear that the MHLF requires any forthcoming proposal for this housing site allocation to include reprovision of a playing pitch within it. The appellants have offered to pay a contribution to fund new off-site sports provision in a suitable location in lieu of this policy requirement. However, no formal binding legal agreement has been put before me to secure this.
10. Moreover, the Council has confirmed that the sum offered by the appellant would be insufficient to secure the necessary mitigation and the appellant has failed to identify precisely where and when these monies should be invested.
11. Consequently, even if a suitable contribution was to be provided, there is no certainty that this could be utilised within an appropriate timescale. The lack of a mechanism before me to secure the appellants' proposed mitigation means that no weight can be attributed to this matter. This stance is consistent with that of the 2018 Decision. Crucially, there is nothing before me in the submitted evidence or any apparent material change in circumstances which justifies an alternative stance.

12. Therefore, it is evident that the particular appeal scheme has not materially progressed this issue on from when the 2018 Decision was issued. Although the debate about the recreational requirements arising from the development of the social club site has clearly been protracted, the reasons for this are of no consequence to the outcome of this appeal.
13. The evidence before me does not provide sufficient justification to reduce the weight to be given to the requirements of Policy H33. Furthermore, the appeal proposal conflicts with paragraph 99 of the National Planning Policy Framework ("the Framework") in that it has not been demonstrated that it meets the circumstances where existing open space, including playing fields, can be built upon.
14. For the reasons given, the particular appeal proposal would result in the loss of playing field and would not make suitable re-provision. This would undermine the current and future local supply of playing fields. The proposal would therefore conflict with Policy H33 of the MHLP in respect to the retention and re-provision of pitches, as well as Policy CS4 of the Core Strategy (2008) which seeks to promote healthier communities and access to leisure facilities.

Flood-risk

15. Paragraph 167 of the Framework requires that planning proposals do not increase flood-risk elsewhere and sets out the circumstances whereby a site-specific Flood-Risk Assessment ("FRA") should support a planning application.
16. I have no cause to dispute the Council's stance on the need for an FRA in this instance. Nonetheless, the evidence which is before me indicates that the Council believed that there was potential for any flood-risk arising from the particular appeal scheme to be remedied. An FRA was not submitted as part of the planning application, and this was not addressed prior to the Council reaching its decision. The reasons for this are of no consequence to the outcome of this appeal.
17. The appellant has advised that an FRA was prepared and submitted to the Council as part of another planning application for the appeal site, which is currently under the Council's consideration. Nonetheless, there is no substantive evidence before me to demonstrate whether or not this appeal proposal is acceptable in that regard or provide sufficient certainty that a layout could be achieved that avoids that area. It is not within my scope to progress planning proposals further. Given the potential serious consequences of flooding, the failure to demonstrate whether such risk would arise from the appeal proposal and where relevant provide appropriate mitigation weighs significantly against the appeal proposal.
18. The appeal proposal would represent a significant intensification of the number of dwellings which the MHLP anticipates for the site allocation. Policy H1 of the MHLP does allow for a higher yield where it can be demonstrated that this would achieve a high quality design. However, the increased numbers on the site are in part a result of proposed development within Flood Zone 2 and there is no indication from the submitted details that the increased number is the result of a design led approach.

19. For these reasons, it has not been adequately demonstrated that the appeal proposal would not pose a flood-risk. This is in conflict with Policies CS4 and DC1 of the Middlesbrough Local Development Framework Core Strategy ("the Core Strategy") which requires sufficient information is supplied to determine the application and seeks to limit the effect of development on levels of water.

Highways

20. The appeal proposal will result in a significant intensification of the number of units which the MHLP anticipated would be served off the proposed junction with Park Road South. The evidence which is before me indicates that the Council believed that there was potential for any highway and accessibility issues arising from the particular appeal scheme to be remedied. Nonetheless, a Transport Statement ("TS") had not been submitted as part of the planning application and this was not addressed prior to the Council reaching its determination. The reasons for this are of no consequence to the outcome of this appeal.
21. The appellant has advised that a TS has been prepared and submitted to the Council as part of their other current planning application for the appeal site. Nonetheless, there is no substantive evidence before me to demonstrate with sufficient certainty whether or not the particular appeal proposal is acceptable in that regard.
22. Paragraph 110 of the Framework requires that proposals promote sustainable transport modes and safe and suitable access, as well as securing mitigation of any significant impacts on the transport network. From my site inspection it is evident that the appeal site is situated within a location which is readily accessible to local services and facilities by modes other than the car. However, the failure to adequately demonstrate that the appeal proposal is satisfactory in terms of highway capacity and safety matters weighs significantly against the appeal proposal.
23. For these reasons, it has not been adequately demonstrated that the appeal proposal would be acceptable in highway terms. This is in conflict with Policy DC1 of the Core Strategy which requires that sufficient information is supplied to determine the application and ensure that there is a limited impact upon the capacity of transportation infrastructure and no impact on highway safety.

Other Matters

24. The main parties do not dispute that the appeal site is of a type and location with the potential to contribute to an increase in nitrates or phosphates to a river catchment draining into the environmentally sensitive Teesmouth and Cleveland Coast SPA and Ramsar. This matter would require further evidence to be provided by the main parties. Although the main parties have indicated that they would be prepared to undertake the necessary assessment, there are other reasons why this appeal should not succeed. The outcome of any such assessment would not change my findings in respect to those main issues.
25. The appeal proposal would have scope to make a reasonable contribution to housing land supply and delivery in the area and this is a significant benefit weighing in favour of the appeal proposal irrespective of the housing land supply and delivery position.

Conclusion

26. For the reasons given above, the appeal scheme conflicts with the development plan taken as a whole. There are no material considerations before me that outweigh this conflict, including the contribution that the appeal scheme would make to the future supply of housing. I therefore conclude that the appeal should be dismissed.

C Dillon

INSPECTOR