



Appeal Decision

Site visit made on 1 September 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/X1355/W/22/3297977

Greenhills Farm Cottage, Greenhills Farm, Wheatley Hill, Durham DH6 3QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs James and Anne Horn against the decision of Durham County Council.
 - The application Ref DM/19/03819/FPA, dated 1 December 2019, was refused by notice dated 29 October 2021.
 - The development proposed is construction of two detached dormer dwellings (revised application).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs James and Anne Horn against Durham County Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The description of the proposed development in the banner heading above, is taken from the Council's decision notice, which accurately and succinctly describes the development proposed.

Main Issues

4. The main issues are whether the proposed development would be in a suitable location having regard to the spatial strategy for the area, access to services and facilities and the effect of the proposal on the character and appearance of the surrounding area.

Reasons

Location

5. The appeal site forms part of the land owned by the appellants which also includes, amongst other things, a recently approved micro-light airfield centre. The appellants advise that the land proposed for the dwellings was previously approved as residential garden land. In any case, whether the land falls within the curtilage of the micro-light site or residential land in an area that is not built up, the land would be, by definition, previously developed land (PDL).
6. The appeal site lies along the B1279, to the east of Wheatley Hill but outside of its (and any other settlement's) built-up area boundary as defined in the

County Durham Plan (2020) (DP). This means that the site is treated as countryside for the purposes of applying the relevant DP policies.

7. As there are dwellings to the south and south west in close proximity, and with the existing development associated with the micro-lite business, the term "countryside" is not a particularly apt description of the appeal site's characteristics. Instead, it denotes that the site is not within a town or village identified as part of the settlement strategy in the DP.
8. New development in the countryside is permitted where it is related to specific forms of development as set down in Policy 10 of the DP. These include, amongst other things, development necessary to support the expansion of an existing business falling beyond the scope of a rural land-based enterprise, where it can be clearly demonstrated that it is, or has, the prospect of being financially sound and will remain so.
9. The occupation of the proposed dwellings is not functionally necessary to support the expansion of the existing business. This is because the dwellings would be sold off and occupied independently to the micro-lite business. However, it is put to me that the proposal would be a means of securing additional funding and is necessary, in this regard, to support the expansion of the business.
10. Developing the appeal site as proposed would generate funds and maybe more desirable to the appellants than other funding sources. However, there is no mechanism before me that would ensure that the proceeds from any sale would be tied to the business.
11. The appellants advise that they have refused offers of funding because of the terms attached to the offers. However, there is no substantive evidence before me of what the offers and terms entailed. In this regard, it has not been clearly demonstrated that the appeal proposal is the only way to provide funding. Based on the information provided, there is insufficient evidence to demonstrate that other possibilities do not exist.
12. As such, even if I accept the appellants position that the scope of development intended to be acceptable under Policy 10 of the DP includes enabling development, the proposal before me would still conflict with this policy. Therefore, whilst the National Planning Policy Framework (the Framework) supports a prosperous rural economy and, in this regard, the associated benefits of the airfield and clubhouse are noted, I cannot conclude that the proposed dwellings are necessary to realise such benefits.
13. The site is not 'isolated' in the context of paragraph 79 of the Framework. There would be some broad support from both the Framework and Policy 10 from making effective use of land, including PDL. However, I have not been referred to any other policies that would allow residential development in this location in the countryside, even considering the land as PDL.
14. Given the location of the appeal site in comparison to services and facilities in the area, future occupiers would not have particularly good access to services and facilities. The footpath to Wheatley Hill is not particularly wide, is unlit and, combined with its distance at approximately 900m, I do not consider it to be a particularly attractive route to take.

15. Nonetheless, the footpath would be available as an option, and there are also bus connections within walking distance from the appeal site. As such, future occupiers would not be solely reliant on private vehicles. In this regard, I do not consider, insofar as the appeal sites accessibility is concerned, that this would lead to a conflict with Policy 10 of the DP. Moreover, the Framework acknowledges that opportunities for sustainable transport solutions in rural areas are reduced. This does not, however, alter my findings regarding the conflict with the Council's spatial strategy.
16. Accordingly, and to conclude on this main issue, the proposal would not be in a suitable location having regard to the spatial strategy for the area. Insofar as it relates to this matter, the proposal would therefore conflict with Policy 10 of the DP. This Policy is consistent with the provisions of the Framework insofar as it relates to protecting the intrinsic character and beauty of the countryside, making effective use of land, and promoting sustainable rural development.

Character and appearance

17. The proposed dwellings would be in an open area of land close to the B1279. The existing site layout plan identifies a landscape mound running along the northern boundary of the site. However, there was no such mound in situ during my site visit and the appeal site was open and prominent from the road and the public footpath to the north.
18. The existing hanger building is positioned close to the road behind a hedgerow. However, the other buildings, within the land edged blue in the site location plan, are set back further from the road. Adjacent to the site are a range of dwellings set back from the road, and the clustered nature of these buildings and their design, has the character of a group of farm buildings which is in keeping with the rural location. Even though it is PDL land, the open, spacious, and undeveloped qualities of the land make a small, but positive, contribution to the appearance of the airfield and housing group within the wider rural landscape.
19. The proposed dwellings would be highly visible in this location close to the road. The houses would appear unrelated to the airfield business by their function and occupation and would appear unrelated to the pattern of the existing clustered dwellings. Their design and position would erode the open, spacious, and undeveloped qualities of the site. They would, in this regard, appear an ad-hoc development. The planting of a hedgerow would soften the visual effects of the built form but would not fully mitigate the effects.
20. Given the small scale of development for two dwellings in this location, and seen in the context of the other buildings and the airfield business, the extent of harm would be localised. But it would nonetheless be harmful. I have come to this conclusion noting that the site has no underlying rural landscape or heritage designation and is not within the Green Belt.
21. I therefore find that the proposal would have a harmful effect on the character and appearance of the surrounding area. As such, the proposal would be contrary to the requirements of Policies 10, 29 and 39 of the DP and paragraph 174 of the Framework. These stipulate, amongst other things, that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Other Matters

22. There is a dispute between the main parties as to whether the appeal site is within the 6km recreational disturbance buffer for the Durham Coast Special Areas of Conservation (SAC) and Northumbrian Coast Special Protection Area (SPA) (the European Sites). If it is, then the Habitat Regulations¹ would require an assessment to be undertaken, as to whether the proposal would be likely to have a significant effect, on the interest features of the protected sites. This includes potential effects from recreational disturbance from occupiers of new residential development. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to consider this matter further and, if necessary, complete an Appropriate Assessment for this scheme.
23. However, I have already identified harm in the main issues, such that considering this matter further would not alter the outcome of this appeal. On that basis, there is no need to examine this matter further for the purposes of making my decision.
24. Concerns regarding the processing of the application are not issues that I can assess as part of this appeal. The validity or not of such matters does not affect the planning merits or effects of the proposal before me.

Planning Balance

25. The DP has relatively recently been adopted and is consistent with the Framework and the conflict with relevant policies is a matter that weighs significantly against the proposal. Indeed, the spatial strategy of the area would be undermined if it was allowed, bearing in mind that Paragraph 15 of the Framework reminds decision-makers that the planning system should be genuinely plan-led. This reflects the primacy of the development plan set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004. To allow development contrary to their provisions would therefore undermine and dilute the plan-led system and the future pattern of development in the area.
26. I am mindful that situations such as that proposed could be repeated across the countryside, in locations where similar arguments maybe presented that a dwelling (or more) would fund the expansion of an existing business. Allowing this appeal would make it more difficult to resist further planning applications for similar developments. The cumulative effect of such ad-hoc developments would further undermine the spatial strategy.
27. The conflict with the spatial strategy and the localised harm to the character and appearance of the area, weighs significantly against the proposal. Moreover, although I have not found specific policy conflict with regards to accessibility, future occupiers of the proposed development would still not have particularly good access to services and facilities.
28. The wider economic and social benefits arising from two dwellings would be limited, due to the scale of the development, and would attract limited weight in favour. I have come to this conclusion having regard to the importance that the government places on boosting the supply of housing, locating, and building sustainably and making effective use of land including on PDL.

¹ The Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations)

Moreover, the extent of traffic and activity generated by two additional dwellings would be modest.

29. I acknowledge the personal circumstances of the appellants and their business. In this regard, I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The PSED sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not. I have no substantive evidence regarding the specific need for the proposed development in relation to a protected characteristic, limiting the weight I afford this matter.
30. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home and is engaged in this case. In reaching my decision, I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
31. There would be financial benefits from the proposed development which would help support the appellants. If planning permission were to be refused, there would be increased uncertainty about the future, representing an interference with their home and family life. However, as set down previously, it has not been clearly demonstrated that the proposed development is the only way to provide funding. As such, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under the HRA.
32. I am not therefore persuaded that these material considerations outweigh the harm and policy conflicts in relation to the first two main issues. As such, a refusal of permission would be proportionate and necessary and in the public interest.

Conclusion

33. Overall, I find there to be no material considerations, that would indicate that the appeal decision should be taken other than in accordance with the development plan.
34. For the reasons given above, the appeal is dismissed.

Mr R Walker

INSPECTOR