



Appeal Decision

Site visit made on 1 August 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 03 March 2023

Appeal Ref: APP/W0734/W/22/3297347

Land at Hemlington Lane, Middlesbrough TS8 9DW

- 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 Ken Shannon against the decision of Middlesbrough Council.
 - The application Ref 19/0355/FUL, dated 10 May 2019, was refused by notice dated 22 October 2021.
 - The development proposed is described as erection of 18no bungalows with associated access and landscaping works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Ken Shannon against Middlesbrough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. During determination of the planning application, the proposal was reduced from 22 to 18 bungalows, and the parties agreed a change of the description of development. I have adopted the description set out in the Council's decision notice and cited by the appellant on the appeal form.
4. The appellant has submitted a signed and dated unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). The UU includes planning obligations relating to the provision of affordable housing, replacement tree planting and a financial contribution towards highway improvement works. The Council was given an opportunity to comment on the planning obligation. I shall return to the UU later.
5. Since the appeal was lodged Natural England (NE) has updated its advice in relation to nutrient level pollution from new housing developments within Tees Valley. The Council identify that, due to the proposal increasing wastewater discharge, it would increase the total annual nitrogen to the Teesmouth Special Protection Area (SPA) and appropriate mitigation would be required. The appellant does not dispute this and an updated UU has been provided which sets out that, prior to commencement, a mitigation strategy for nutrient neutrality would be submitted for the Council's approval. The Council considers the UU not to be sufficient for nutrient neutrality. On this basis I have considered nutrient neutrality as a main issue within this decision.

6. It is noted in the planning history for the appeal site that it has been consented for residential development in 1993, 1999 and 2015. The 1993 consent was allowed through a planning appeal. All consents have now lapsed and little detail regarding them has been provided. I have considered the scheme before me on the evidence submitted and on its merits. Due to the age of the 1993 appeal and it being superseded by the subsequent consents I have not considered it further.

Main Issues

7. The main issues are the effect of the development on:
- trees, biodiversity and ecology;
 - the living conditions of the existing residents on Hemlington Lane with respect to traffic noise and disturbance; and
 - Teesmouth Special Protection Area as a habitat site.

Reasons

Trees, biodiversity and ecology

8. The appeal site sits adjacent to the existing housing on Hemlington Lane and consists of a wedge of semi-mature woodland and open grassland. The site is within Middlesbrough's defined Green Wedge. The proposal would involve the removal of the majority of the woodland and grassland to allow the construction of 18 detached dormer bungalows with associated infrastructure.
9. The appellant's Preliminary Ecological Assessment (PEA) by Ajt Environmental Consultants (Ref 839) considered the proposal's effect on the site's existing trees, biodiversity and ecology. The PEA assessed the site for a variety of species and while it did not identify any deer on site as indicated by interested parties, it did amongst other matters, consider bats, badgers and nesting birds. It is understood that Tees Valley Wildlife Trust considered the assessment and, other than a request for replacement tree compensation, raised no adverse comments with its findings or the date it was completed. Based on the findings of the PEA, I am satisfied that it is unlikely that protected species are present on the site or would be adversely affected by the proposal.
10. To mitigate for the loss of the trees and habitats, compensation would be provided through the retention of parts of the existing tree boundaries and the inclusion of a central tree and green space area. Further compensation would be provided by means of off-site tree planting which the Tees Valley Wildlife Trust has requested. This tree compensation would be secured through a financial contribution.
11. While the Council dispute the scale of tree removal and the biodiversity net gain of the proposal, it provides no substantive ecological evidence to counter the findings of the PEA. It also provides no evidence to demonstrate that the mitigation suggested by the Tees Valley Wildlife Trust would not be sufficient. While it is acknowledged that measurable improvements for biodiversity are not detailed, as Tees Valley Wildlife Trust raised no specific concerns regarding tree removal and based its assessment of the required level of off-site tree compensation on the extent of established trees to be removed, I see little reason to question the level of compensation being provided. As such, I

consider the proposal would include sufficient mitigation which would maintain and protect Middlesbrough's biodiversity, wildlife species, and natural habitats as a whole.

12. Reference is made to the Middlesbrough Green Strategy 2021 (Green Strategy) which is a high-level plan to make Middlesbrough greener. This includes the aim of increasing tree coverage across the town. The Green Strategy does not specifically detail how existing tree loss is to be assessed and how the increase in tree coverage is to be considered on new planning applications. In all likelihood, the proposal would, with its off-site tree compensation, maintain or exceed the level of tree coverage as exists and therefore would have as a minimum a neutral effect. It would therefore not undermine or negatively impact on the overall aim of the Green Strategy.
13. Due to the site's urban setting and physical barriers created by the roads and existing development, it is evident that the section of green wedge over the site is a fragmented and isolated element of the wider green wedge network. As such the loss of trees and habitats for the proposal would not result in a severe loss or detrimental impact on the integrity of the wider green wedge network or its existing green links.
14. The Council raise that not only do the trees provide biodiversity and ecology benefits, but they also contribute to and enhance the character and appearance of the area. However, the character and appearance of the proposal was not identified as unacceptable at the planning application stage or detailed as a reason for refusal. No evidence has been presented by the Council to dispute this original finding. There are therefore no compelling reasons why the proposal and the loss of trees would not be acceptable in terms of character and appearance and design quality.
15. In conclusion, the proposal, with its tree mitigation and compensation, would not adversely affect trees, biodiversity or ecology. It would comply with the sustainability criteria detailed in Policies DC1(e) and CS4(j) of the Middlesbrough Local Development Framework Core Strategy 2008 (Core Strategy). These seek, amongst other matters, for new development to sympathetically integrate physically and visually into its surroundings and protect biodiversity assets, wildlife species and natural habitats.
16. The proposal would also comply with paragraphs 131 and 174(d), and section 15 of the National Planning Policy Framework 2021 (the Framework) which state, amongst other matters, that existing trees are retained wherever possible, and proposals should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Living conditions

17. Hemlington Lane is a cul-de-sac which leads off Ladgate Lane. It is a reasonably wide two-way access which serves five existing properties. These properties are relatively well set back from the lane by a mix of front gardens and drives. While the lane and properties have predominantly woodland and landscaped boundaries, due to the proximity of Ladgate Lane and the A174 with its associated slip roads, as I observed during my site visit, the area is affected by a relatively high degree of offsite traffic noise and disturbance. The area is therefore not currently an overly quiet place.

18. The proposal would use Hemlington Lane as a single access point, extending the cul-de-sac into the development and increasing traffic on the lane. It is appreciated that the increase in traffic would be an unwelcome change for the residential occupiers of Hemlington Lane. However, while the additional traffic would be a noticeable increase above existing levels, it would not be excessive or unusual in the context of residential streets including culs-de-sac in settlements.
19. A noise assessment by L A Environmental Ltd (Ref: POD/HL/001) was completed and, subject to validation testing of the sound attenuation, the Council's Environmental Protection Team raised no objection or concerns regarding noise and disturbance to existing and future residents. As such, when taken in conjunction with the existing properties being set back from the lane and the existing surrounding traffic noise, there is little evidence to show that the proposal would result in detrimental levels of noise and disturbance. It is therefore considered unlikely that the proposal would change the character of the lane to such an extent as to unacceptably harm the existing residents' living conditions.
20. I note the concerns of interested parties with respect to construction traffic disturbance. While it is inevitable that there would be disruption during the construction phase, this would be a relatively short-term impact and, subject to the mitigation set out in the SAJ Transport Consultants' Framework Construction Traffic Management Plan (Ref: JN2102-Rep-0001.2) which could be secured by way of a planning condition, it would not result in unacceptable harm to the living conditions of existing residents.
21. In conclusion, the proposal would not unacceptably harm the living conditions of the neighbouring residents on Hemlington Lane with respect to traffic noise and disturbance. It would not conflict with the residential amenity aims of Policy DC1(c) of the Core Strategy which seeks to protect the surrounding environment and amenities of occupiers of nearby properties.

Habitat Site

22. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a plan or project is likely to result in a significant effect on a European site (in this case the Teesmouth SPA), a competent authority is required to make an appropriate assessment of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. Any likely significant effects arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle. For the purposes of this appeal, I am the competent authority.
23. The proposal would comprise a new residential development with additional occupiers and therefore additional wastewater generation. The Council has indicated that it would increase the total annual nitrogen to the SPA. The appellant has not disputed this. On this basis, without mitigation the proposal presents a likely significant effect on the integrity of the SPA, when considered alone and potentially in combination with other residential developments in the area. Neither party has provided an appropriate assessment for the proposal.

24. While it is appreciated that the appellant would be willing to assess and provide any appropriate mitigation prior to commencement as set out in the UU, no details of how this would be achieved has been provided.
25. It is acknowledged that the Government is implementing plans to reduce water pollution through such things as new legal duties on water companies and the introduction of a Nutrient Mitigation Scheme. However, these have not been implemented yet and therefore there is no certainty at this time that they will provide adequate mitigation for the proposal. Given this lack of detail, I cannot be sure that appropriate mitigation would be achievable. Allowing the proposal would therefore be contrary to the Regulations and the precautionary principle embedded within the Habitats Directive.
26. I conclude that it has not been demonstrated that the proposal would not have a negative effect on the SPA, with regard to nutrient neutrality. It would therefore conflict with section 15 of the Framework which deals, amongst other matters, with sites that have a nature conservation importance.

Other Matters

Planning Obligation

27. As noted above, the appellant has submitted a planning obligation in the form of a UU dated 18 November 2022. It is noted that the appellant unsuccessfully attempted to get agreement of the planning obligation with the Council. The UU includes provision for affordable housing, replacement tree planting, a financial contribution towards highway improvement works and to achieve nutrient neutrality. It is evident in the planning application's Committee Report that a number of these obligations were agreed. The Council has been given the opportunity to comment on the UU and, with the exception of the nutrient neutrality obligation, it did not dispute any of the other obligations.
28. The Framework states that planning obligations should only be sought where they meet the tests set out in paragraph 57. These tests, which mirror those set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2012, require that planning obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
29. The obligations for an affordable housing contribution in compliance with Policy H12 of the Core Strategy and a compensation tree contribution in compliance with Tees Valley Wildlife Trust request and calculation meets the requirements of Regulation 122 of the CIL Regulations.
30. However, while a financial contribution for the toucan crossing and associated highway works would be necessary and directly related to the development, no justification of the proposed contribution for this has been provided. It is therefore not possible to assess if this obligation would be fair and reasonably related in scale and kind to the development. The obligation therefore would not meet the requirements of Regulation 122 of the CIL Regulations.
31. As detailed previously, the nutrient neutrality obligation would not be sufficient to demonstrate that appropriate mitigation could be achieved to remove the proposal's negative effect on the SPA.

32. In light of these findings, since the obligations relating to the toucan crossing and associated highway works and nutrient neutrality obligations would fail to meet one or more of the tests set out in CIL Regulation 122, I am unable to take them into account in determining the appeal. The obligations relating to affordable housing and tree compensation could however, be delivered through the submitted UU.
33. I have had regard to other concerns raised on the existing Hemlington Lane residents by interested parties, including the housing need, number of units, design and style of the units, traffic and highway safety, drainage, and effect from Covid on consultation. Ultimately, the Council does not oppose the proposal on grounds other than those set out in the main issues. Taking account of the evidence before me and the opportunities for all parties to comment on this during this appeal, I have not identified any other matters of such significance as to result in further benefits or harms that would lead me to come to a different conclusion to my findings above.

Planning Balance and conclusions

34. In terms of benefits, the provision of up to 18 dwellings, including a contribution to affordable housing, would make a notable contribution to housing supply. Although a relatively modest increase in housing supply, the social, economic and environmental benefits associated with building and occupying the dwellings are factors that carry moderate weight in the proposal's favour.
35. While I have found that the proposal would be acceptable with regard to trees, biodiversity and ecology and living conditions of the existing residents on Hemlington Lane with respect to traffic noise and disturbance, I have found it would unacceptably harm the Teesmouth SPA and the submitted planning obligation would not mitigate for this. This would severely undermine the purpose of Section 15 of the Framework. I therefore afford this harm substantial weight against the proposal.
36. Furthermore, I have found that the submitted planning obligation would not mitigate for the highway harms identified and as this mitigation is relatively extensive and ensures highway safety is maintained then I give this substantial weight against the proposal.
37. Consequently, while the benefits of the scheme are moderate, they do not, even collectively, overcome the substantial weight I attach to the harm identified to the SPA and on the highway. The adverse impacts in this case significantly outweigh the benefits when assessed against the development plan and Framework.
38. Accordingly for the reasons given above I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR