



Appeal Decision

Site visit made on 18 April 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2023

Appeal Ref: APP/Z4718/W/22/3309636

Land between 10 and 30 Cuckstool Road, Denby Dale HD8 8RB

- 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 David Barlow Properties against the decision of Kirklees Metropolitan Council.
 - The application Ref 2022/60/90668/E, dated 16 February 2022, was refused by notice dated 22 August 2022.
 - The development proposed is residential development (up to 4 dwellings)(all matters reserved) together with biodiversity enhancements.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application is submitted in outline form with all matters reserved for later consideration. Therefore, whilst plans have been submitted suggesting how up to four dwellings could be accommodated on the site, these have been provided for indicative purposes only.

Main Issue

3. The main issue is the effect of the loss of a designated area of urban green space, with particular reference to the impact that would arise upon the character and appearance of the area.

Reasons

4. The appeal site is an area of open, undeveloped land running alongside Cuckstool Road and it forms a part of a larger area of urban green space designated in the Kirklees Local Plan Strategy and Policies 2019 (LP).
5. Policy LP61 of the LP states that the loss of urban green space will only be permitted where one of three criteria is met. The appellant contends that both criteria a) and b) of Policy LP61 can be satisfied. To meet criteria a) it must be demonstrated that the open space is clearly no longer required to meet local needs for open space, sport or recreational facilities and does not make an important contribution in terms of visual amenity, landscape or biodiversity value. To meet criteria b) it is required that replacement open space, sport or recreation facilities which are equivalent or better in size and quality are provided elsewhere within an easily accessible location for existing and potential new users.

6. The appellant refers to the Urban Green Space and Local Green Space Technical Paper 2017 (TP) which sets out a minimum natural and semi-natural greenspace provision of 2 hectares per 1,000 population. For the Denby Dale ward the actual on the ground provision set out in the TP is 7.23 hectares per 1,000 population, which substantially exceeds the minimum requirement. However, this is a minimum not maximum requirement and criteria a) of Policy LP61 of the LP sets out the additional requirement that the open space does not make an important contribution in terms of visual amenity, landscape or biodiversity value.
7. In that respect, whilst there are existing dwellings located both on the same side of Cuckstool Road and on the opposite side of the road to the appeal site, the surrounding area nonetheless has a spacious feel as the settlement of Denby Dale transitions to its rural surroundings. The appeal site makes a significant positive contribution to this feeling of spaciousness, and in turn to the character and appearance of the area surrounding the appeal site. It also forms part of the wider area of designated urban green space which includes a cricket club, a bowls club and the woodland which is immediately to the rear of the appeal site. Collectively this area forms an important and attractive expanse of open land within the urban area. As part of this, the appeal site makes an important contribution to visual amenity. This means that criterion a) of Policy LP61 of the LP is not satisfied.
8. An area of the appeal site would be retained as open space and made publicly accessible. It is also intended to open up access to the woodland to the rear of the site which is in the ownership of the appellant. However, there would nonetheless be a quantitative loss of urban green space as part of the proposal. The area of open space on the appeal site would be of a limited size and the woodland has a steep topography that would be likely to impair its useability. It is unclear whether the cricket club would be receptive to allowing access onto their property from the woodland, but in any event such an access would only be of benefit to people wishing to access the club itself. Taking these considerations as a whole, I am not persuaded that the open space provision would be better in qualitative terms than at present. The proposal does not therefore satisfy criterion b) of Policy LP61 of the LP either.
9. Accordingly, the proposed development fails to accord with Policy LP61 of the LP, which seeks to protect urban green space. I acknowledge that paragraph 99a) of the National Planning Policy Framework (the Framework) is less extensive in its wording than criteria a) of Policy LP61 and that the appellant has drawn attention to the greenspace provision in Denby Dale as outlined in the TP. However, for the reasons I have set out above relating to its contribution to the surrounding area, the open space which comprises the appeal site cannot be considered to be surplus to requirements.
10. Policy LP24 of the LP seeks to promote good design, including by ensuring that development respects and enhances the character of the townscape and the landscape. As the proposed development would result in the construction of up to four dwellings on an area of land which I have found to make an important contribution to visual amenity, it would result in significant harm to the character and appearance of the area. Consequently, it would fail to accord with Policy LP24 of the LP where it seeks to protect character and appearance. It would also fail to deliver the aims of the Framework, where it seeks to achieve well-designed places.

Other Considerations

11. The proposal would provide a biodiversity net gain of 10.76% which would be a benefit of the scheme. This it is stated would include new tree planting. There would also be a boost to the supply of housing through the provision of up to four new energy efficient dwellings on a small site, in a location that has good access to services and facilities. There would be economic benefits including the creation of construction jobs and increased spend in the local economy and social benefits including the delivery of at least some degree of accessible open space and the provision of family homes. The limited number of dwellings and amount of accessible open space that would be provided and the level of biodiversity net gain that would be achieved mean that these considerations carry moderate weight in favour of the appeal proposal.
12. The appellant has provided details of a review undertaken by a third party which suggests that the Council's housing land supply is 4.57 years as opposed to the 5.17 year supply to which the Council refers. The Council has not responded or made comment on this matter. If the housing land supply were to be below five years then the 'tilted balance' set out by paragraph 11d) of the Framework would be engaged. Paragraph 11dii) states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
13. However, even if it were to be the case that there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the adverse effects arising from the loss of the urban green space and the harm to the character and appearance of the area would significantly and demonstrably outweigh the benefits arising from the biodiversity improvements, the boost to the supply of housing and the economic and social benefits that have been identified. Therefore, the proposal does not benefit from the presumption in favour of sustainable development.

Other Matters

14. There is no substantive evidence in the information that is before me to suggest that the proposed development would affect any heritage assets, cause highway safety issues, cause harm to living conditions or give rise to flood risk or drainage issues. However, these are neutral considerations in the planning balance.

Planning Balance and Conclusion

15. For the reasons that I have set out above, the proposed development would fail to accord with Policy LP61 of the LP where it seeks to protect areas of urban green space and with Policy LP24 of the LP where it seeks to protect character and appearance. This would result in significant harm.
16. There would be benefits in terms of the provision of biodiversity net gain, in terms of boosting the supply of housing and with respect to the associated economic and social benefits outlined previously. These considerations carry moderate weight in favour of the proposal. I have found that the proposal does not benefit from the presumption in favour of sustainable development set out by the Framework.

17. In conclusion, the proposal would conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. Accordingly, the appeal should be dismissed.

Graham Wraight

INSPECTOR