



Appeal Decision

Site visit made on 14 February 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2023

Appeal Ref: APP/P2935/W/22/3312278

Land to north-west of Blue House Farm Cottages, Blue House Farm Road, Netherton Colliery, Northumberland NE22 6BB

- 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 Paul Milburn against the decision of Northumberland County Council.
 - The application Ref 22/00913/FUL, dated 9 March 2022, was refused by notice dated 23 August 2022.
 - The development proposed is the construction of two detached dwellings and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of two detached dwellings and associated works at Land to north-west of Blue House Farm Cottages, Blue House Farm Road, Netherton Colliery, Northumberland NE22 6BB in accordance with the terms of the application, Ref 22/00913/FUL, dated 9 March 2022, subject to the conditions set out in the attached Schedule of Conditions.

Preliminary Matters

2. The development description on the application form includes reference to the development being a resubmission. I have removed this wording from the heading above and from my decision as this is not an act of development.
3. Following the Council's decision, a unilateral undertaking (UU) has been submitted. The purpose of the UU is to secure a financial contribution towards mitigation measures in relation to the potential for the development to result in recreational activity on nearby protected sites. I comment on these matters later in my decision.

Main Issues

4. The main issues are:
 - Whether the appeal site is a suitable location for the development proposed having particular regard to, the development plan's spatial strategy; and
 - The effect of the development proposed upon the Northumbria Coast Special Protection Area (SPA) and the Northumberland Shore Site of Special Scientific Interest (SSSI).

Reasons

Location of the development

5. Netherton Colliery is located to the west of Bedlington and is accessed via a lane which meets the main road running between Bedlington and Nedderton village. The appeal site forms one part of a larger gap between the residential properties of Blue House Farm Cottages and the Old Storehouse. In June 2020 planning permission was granted for one dwelling on the land which forms the remainder of this gap¹. At Netherton Colliery and close to the appeal site is the Blue House Farm building group and Howard House School.
6. Policy STP1 of the Northumberland Local Plan 2016-2036, adopted March 2022 (LP) is a strategic policy which sets out a spatial strategy for development within the County. Together with its supporting justification and, amongst other matters, policy STP1 establishes a settlement hierarchy. As a part of the spatial strategy within policy STP1 criterion (f) is permissive of development in "other settlements" which are not Main Towns, Service Villages or Small Villages subject to provisions being met, one of which being that the development would be within the built form of that settlement.
7. In effect, a proposal would comply with criterion (f) of policy STP1, so long as it was within the built form of a locality that is a settlement. There is no defined list of which settlements within the County are "other settlements". Nor is there a definition of what constitutes these "other settlements" provided for within the policy or its accompanying justification nor details on the type or number of buildings that would be expected within one. Although there is no disagreement between the main parties that Netherton Colliery does not constitute a "Small Village", such villages are defined by the LP as "a cluster of dwellings and associated buildings which has a recognised name and identity, and a church or other community building."
8. I note that on the main road running between Bedlington and Nedderton, a signpost identifies Netherton Colliery. Together, Blue House Cottages and the Old Storehouse which are near to the appeal site form an existing grouping of dwellings. The school, albeit a specialist independent one, is another form of building in the area. Therefore, although Netherton Colliery is not a "Small Village", it shares some of the hallmarks of one and, in combination, its characteristics are such that I find that it is an "other settlement" and not, as the Council put to me, an isolated farmstead with associated buildings.
9. Furthermore, I note from the historical mapping evidence before me² that in the past the area contained significantly more built development than at present. Despite so much of this no longer being in existence, it does nevertheless indicate at the history of settlement in this location.
10. I note that the Council has submitted that if it was to consider Netherton Colliery a settlement, the appeal site would be within its built form, and I have no reason to disagree.
11. I have firstly identified Netherton Colliery is an "other settlement" for the purposes of policy STP1 and secondly find that the development proposed would be within the built form of Netherton Colliery. Therefore, even though

¹ Planning Application Reference 20/00397/FUL

² Soils Investigation Report dated 24 July 2018

the appeal site is located beyond the settlement boundary of nearby Bedlington and not even on this boundary edge, the development proposed would, nevertheless meet the requirements of criterion (f) of policy STP1 and would not be within the countryside, the definition for which is provided within the justification to the policy. In turn, criteria (g) and (i) of the same policy, which relate only to development within the open countryside, are not relevant to the development proposed.

12. Furthermore, having identified that the appeal site is within a settlement, the development proposed would not provide for isolated dwellings in the countryside and it also follows that policy HOU8 of the LP is irrelevant in this case and that there would be no conflict with its content. Policy HOU8 is very reflective of the advice provided in relation to isolated dwellings in the countryside at paragraph 80 of the National Planning Policy Framework (the Framework). In my finding that there would be no conflict with policy HOU8 it follows that there would also be no conflict with paragraph 80 of the Framework. Given this, that the precise wording of the Framework in relation to those instances when isolated homes in the countryside should be avoided may have changed is not determinative.
13. The Council submit that the earlier planning permission on the appeal site which has now lapsed³ was granted at a time with a different planning policy context. The Council also state that, although acknowledging that in the previous appeal decision relating to adjacent land⁴ the Inspector found that the development would not result in the provision of an isolated dwelling in the countryside, this was again, at a time prior to the adoption of the LP. The Council therefore emphasise, in relation to the development proposed, that greater weight should be afforded to the content of the LP. Nonetheless, for the reasons given above, and when assessed against the current relevant development plan policies, I have identified that the development proposed is in a settlement and would not therefore result in isolated dwellings in the countryside.
14. For the above reasons, I find that the appeal site is a suitable location for the development proposed having particular regard to the development plan's spatial strategy and consequently, the development proposed complies with policy STP1 of the LP. Though LP policy HOU8 and paragraph 80 of the Framework were also referred to in the Council's first reason for refusal, I have set out above the reasons why there would be no conflict with them.

The SPA and SSSI

15. Other than a short length of coast around Lynemouth Power Station, the whole of the Northumberland coast below the high tide mark is protected by virtue of Sites of Special Scientific Interest because it is inhabited by populations of wading birds which are of national importance. Various European sites are also situated on this coast, afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
16. The appeal site is within the zone of influence of the Northumbria Coast Special Protection Area and the Northumberland Shore Site of Special Scientific Interest. The particular species for which the SSSI is designated are purple

³ Application References 17/01163/OUT and 18/03632/REM

⁴ Planning Appeal Decision Reference APP/P2935/W/19/3237608

sandpiper, turnstone, sanderling, golden plover, ringed plover and redshank. The habitat preferences of these species vary but include the inter-tidal rock platforms, sandy beaches and fields close to the foreshore which are present on the Northumberland shore.

17. In summer, the SPA supports an internationally important population of breeding little tern and arctic tern whilst the turnstone and purple sandpiper occur in internationally important numbers. In winter, the inter-tidal rock platform and strandline of sandy beaches form an important resource for the latter two species. In summary, the SPA's conservation objectives are to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive. This is to be achieved through the maintenance and restoration of the population and distribution of its qualifying features and their habitats.
18. The Council's Northumberland Coastal Mitigation Service Strategy Document, December 2018 (NCMSSD) sets out a strategy to prevent any net increase in disturbance to SSSI and SPA bird species arising from increased recreational pressure on the coast caused by new development. The NCMSSD also aims to ensure no net increase in the rate of spread of pirri-pirri bur, a non-native invasive plant species that displaces native species of high conservation value when it becomes established. This spread also arises from increased recreational pressure.
19. The development proposed includes 2 houses each with 3 bedrooms. Due to the site's proximity to the SPA and SSSI there is a reasonable likelihood that those areas would be accessed for recreational purposes by future occupiers of the proposed dwellings. In turn, the development proposed could increase the recreational pressure at the coast and, in combination with other residential development in the surrounding area, result in a significant effect on the integrity of the SPA.
20. As such, the Habitats Regulations require that an Appropriate Assessment is carried out. Under this, I must establish the implications of the development proposed on the SPA having regard to any measures which could be put in place to avoid or mitigate impact. Furthermore, in relation to the SSSI, there is also a statutory duty placed upon me under section 28G of the Wildlife and Countryside Act 1981 to take reasonable steps to further the conservation and enhancement of those features for which it is designated. I have sought further evidence on these matters and Natural England has been consulted.
21. The NCMSSD sets out mitigation measures to be deployed and central to this is the use of wardens who aim to modify people's behaviour through awareness-raising and education. Other actions include bird and recreational disturbance monitoring, improving bird habitats and the removal of pirri-pirri bur.
22. The submitted UU provides for a financial contribution of £1,230, to be utilised for the forms of mitigation set out within the NCMSSD. Natural England has confirmed that it is content that the secured financial contribution would be effective in terms of avoiding adverse effects to the integrity of the SPA. There is no evidence before me to suggest I should reach a contrary conclusion.
23. Paragraph 57 of the Framework and Regulation 122 of the CIL Regulations sets out three tests that planning obligations must meet. Firstly, they must be

necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development and thirdly they must be fairly and reasonably related in scale and kind to the development.

24. The UU would contribute towards the provision of mitigation including the use of wardens without which an adverse effect on the integrity of the nearby SPA and SSSI would likely occur. Therefore, the financial contribution is necessary to make the development proposed acceptable and is directly related to the appeal scheme. In addition, the financial contribution is derived from the costs of delivering these mitigation measures, as set out within an appendix within the LP, and is thereby fairly and reasonably related to the development proposed in scale and kind. The UU meets the requirements of the Framework and the CIL Regulations. I therefore give it significant weight in the determination of this appeal.
25. For the above reasons, I am satisfied that with the proposed mitigation secured through the UU, the development proposed would not have an adverse effect on the integrity of the SPA nor the SSSI. The development proposed would therefore comply with policy ENV2 of the LP, which, amongst other matters, requires development proposals to adequately mitigate any significant harm to designated sites. The development proposed would comply with the Habitat Regulations and, given the outcome of my Appropriate Assessment and having regard to paragraph 182 of the Framework, the presumption in favour of sustainable development is applicable. Finally, no conflict with the duty under section 28G of the Wildlife and Countryside Act 1981 would arise.

Other Matters

26. By reference to the overall countywide housing requirement, and the spatial distribution of this set out within policies HOU2 and HOU3 of the LP, the Council submit that there is no pressing need for the houses proposed. However, I firstly note that both the countywide housing requirement figure over the plan period and, its area distribution around the County are minimums, and there is no indication that it should be considered a ceiling. The spatial distribution of this housing is also clearly presented as being indicative only within policy HOU3. Given this, and that, in the main issue, I have identified no conflict with the development plan's spatial strategy, even accounting for the net completions and housing planning permissions which apply to the East and West Bedlington Parishes, I have no firm basis to conclude that the development proposed is unwarranted.
27. Although the Council does not cite the policy within its reasons for refusal, it alleges that the development proposed would be in conflict with policy STP3 of the LP. This policy sets out principles which development proposals will be expected to adhere to, albeit only where appropriate. Whilst the appeal site is not previously developed land it would, nevertheless, result in the development of a gap within the built form of a settlement, effectively amounting to infill development. I therefore find that the development would still make efficient use of land as advocated by policy STP3 and no harm would be derived from the appeal site not constituting previously developed land. The Council indicate at conflict with other criteria of policy STP3, but the reasons are not clear to me and, therefore, I find that the development would accord with the policy.

Conditions

28. I have had regard to the conditions suggested by the Council. I have imposed the standard condition in respect of time limitation and a plans condition in the interests of certainty. Although there is no disagreement between the main parties that a Preliminary Ecological Appraisal (PEA) was undertaken in relation to the site no such report is before me. Despite this, I have noted the comments of the Council's Ecologist and there is no disagreement between the main parties that ecological mitigation measures could be implemented so as to ensure that the development proposed would be acceptable in this regard. In these particular circumstances, I have imposed a condition so as to ensure that suitable ecological mitigation and enhancement measures are implemented. The Council has suggested that this condition should include measures in relation to vegetation clearance, tree felling and root protection, however, given the site is devoid of substantial landscape features, this is unnecessary. The Council has suggested, so as to avoid the need for such a condition, that an updated PEA could be submitted at this stage. However, there are insufficient grounds for me to accept such new evidence at a late stage within the appeal process. The condition I have imposed is a pre-commencement condition and this is necessary as some mitigation measures must be agreed prior to works on site taking place, for instance, measures to prevent mammals being trapped within open excavations.
29. A proposed drainage plan has been submitted which, amongst other matters, identifies the use of soakaways. Although this plan indicates that percolation tests are required, I note that the site investigation and remedial report submissions do include some percolation test results. However, I am mindful of the comments of the Lead Local Flood Authority which include no confirmation that the drainage submissions are acceptable without the imposition of a condition requiring further details. In these particular circumstances, I have no conclusive evidence before me which provides me with the assurance that the submitted drainage scheme is complete or wholly suitable to serve the development proposed. Therefore, a drainage condition is necessary so that the development proposed accords with policy WAT4 of the LP.
30. The Council has suggested a further condition in relation to the management of surface water run-off from private land in the interests of highway safety. Both paragraph 56 of the Framework and content within the Planning Practice Guidance are clear that planning conditions should be kept to a minimum and only imposed where they would satisfy all 6 tests for their imposition. I have no substantive evidence before me to suggest that any particular additional measures over and above the surface water control measures already required by condition would ensure are necessary or that the highway in the vicinity of the site is particularly prone to surface water flooding issues. I have, therefore, not imposed a further specific condition for such a purpose.
31. Although broad details of the materials to be utilised in the construction of the approved buildings are included on the submitted plans, in order to ensure that the precise material choices are appropriate to the character and appearance of the area, I have imposed a condition requiring such details to be agreed.
32. I have imposed conditions requiring a construction method statement, control over the construction working hours and delivery periods. These are each necessary to ensure that the effects of construction on the living conditions of

neighbouring occupiers would be acceptable. The condition relating to the construction method statement is a pre-commencement condition. This is necessary as the measures to control construction must be determined before those activities commence.

33. I have imposed a condition regarding the implementation of the vehicular access and car parking area in the interests of highway safety and further conditions relating to cycle parking and electric vehicle charging so as to promote sustainable transport choices in accordance with policies TRA1 and TRA2 of the LP.
34. In order to ensure that site contamination is suitably remediated and so as to minimise the pollution and health risks which could arise from any unexpected site contamination, two further conditions are necessary.
35. In the interests of precision or clarity I have in some instances made some general amendments to the wording of the suggested conditions, some amalgamation of the suggested conditions and, some re-ordering but in so doing I am satisfied that neither party's interests would be prejudiced. These amendments include the omission of references to "unless agreed in writing by..." as there are more appropriate formal methods of dealing with variations to planning conditions.

Conclusion

36. For the reasons set out above, I conclude that the appeal is allowed subject to the conditions within the following schedule.

H Jones

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 3355/SLP/A, 3355/12C, A/3355/1000, A/3355/1002, 3355/24C, 3355/14A, A/3355/1001, Phase 1 Geo-Environmental and Coal Mining Risk Assessment 16564A 1, Remedial Statement dated 7 February 2021 and Soils Investigation Report dated 24 July 2018.

3) No development shall commence, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
details of any temporary construction accesses to the site including measures for their removal following completion of construction works;
the parking of vehicles of site operatives and visitors;
loading and unloading of plant and materials;
storage of plant and materials used in constructing the development;
the erection and maintenance of security hoardings;
wheel washing facilities;
measures to control the emission of dust and dirt during construction; and
a scheme for recycling/disposing of waste resulting from construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

4) No development shall commence until a scheme of ecological mitigation and enhancement measures, inclusive of a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall, amongst its content, include:
details of the planting of native species and measures to ensure their replacement should any such planting die, be removed or become seriously damaged or diseased;
external lighting details;
a reptile method statement;
measures to prevent mammals being trapped within open excavations; and
the provision of nesting features

Development shall be carried out in accordance with the approved details.

5) No development other than initial site clearance, preparatory works and earthworks and, the formation of foundations, shall take place until a scheme of surface water drainage works has been submitted to and approved in writing by the local planning authority. No building hereby permitted shall be occupied until the scheme of surface water drainage works has been implemented in accordance with the approved details. The submitted scheme of surface water drainage works shall incorporate Sustainable Drainage Systems (SuDS) unless it is clearly demonstrated as a part of the scheme submission that SuDS are not technically, operationally or financially deliverable or viable or, that the SuDS would adversely affect the environment or safety.

Where SuDS are to be provided, the submitted scheme shall, amongst its content, include:

the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and

a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

6) No development involving the erection of any sections of the external walls or roof of the buildings hereby permitted shall commence until details of the materials to be used in the construction of the external walls and roof have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) No dwelling hereby permitted shall be occupied until the approved remediation scheme and measures as detailed within the Remedial Statement dated 7 February 2021, Soils Investigation Report dated 24 July 2018 and drawing A/3355/1002 have been carried out. Furthermore, and upon completion of the development, a verification report by a suitably qualified contaminated land practitioner demonstrating that all of the remediation scheme and measures have been carried out shall have been submitted to and approved in writing by the local planning authority before either dwelling is occupied.

8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

9) No dwelling hereby permitted shall be occupied until the vehicular access and car parking area to serve that dwelling has been implemented in accordance with the details shown on plans 3355/24C, 3355/12C, A/3355/1000 and A/3355/1001 and thereafter retained as such.

10) No dwelling hereby permitted shall be occupied until the cycle parking to serve that dwelling has been implemented in accordance with the details shown on plans 3355/12C and thereafter retained as such.

11) No dwelling hereby permitted shall be occupied until the electric vehicle charging point to serve that dwelling has been implemented in accordance with the details shown on plans 3355/24C and 3355/12C and thereafter retained as such.

12) Construction works and construction related site deliveries or site despatches shall only take place between the hours of 08:00 and 18:00 on Mondays to Fridays inclusive and 08:00 and 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

End of Schedule