



Appeal Decision

Site visit made on 8 April 2025

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2025

Appeal Ref: APP/X1355/W/24/3354705

45 Etherley Grange, Bishop Auckland, Durham, DL14 0JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Ms Lynn Reynolds against the decision of Durham County Council.
 - The application Ref is DM/24/00385/OUT.
 - The development proposed is a single dwelling within the garden with matters of access, appearance, layout and scale considered (landscaping reserved).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline, with approval sought for access, appearance, layout and scale. Landscaping is a matter reserved for future determination.

Main Issues

3. The main issues are whether or not
 - the site is a suitable location for the proposal having regard to its effects on the character and appearance of the area and its sustainability,
 - the site can be suitably accessed,
 - the site could be made safe and stable,
 - the proposal would have an acceptable effect on nearby trees
 - the proposal is required to deliver biodiversity net gain and whether or not it does so, and
 - the proposal would cause unacceptable harm to the living conditions of the occupiers of adjoining properties with specific regard to overdominance, overbearing and loss of privacy.

Reasons

Location

4. Experienced from the road, whether on foot or in a car, the impression of Etherley Grange is of a single-depth, ribbon settlement with a strong and persistent linear character. This is in spite of the broad variety of form, scale, relationship to the road, plot-depth and orientation of the houses along it.

5. Whilst I accept that there are a few examples of houses in the settlement with additional dwellings or substantial outbuildings to the rear, on the basis of the evidence and my observations on my site visit, I find that these are the exception, rather than the norm. Although they do contribute to the established character of the settlement, they are not so prevalent as to justify the departure from the broadly linear, single-depth established character that the proposal would represent.
6. I also consider that the particular arrangement of the site, and its relationship to the properties which surround it would mark it out, and highlight the difference between the site and its surroundings and the established character of the area. Even accepting the relatively limited public views of the house itself, the close location of its access, the access for the host property and the (currently fenced, but still in-situ) parking area for numbers 47 to 53 would mark the site out as atypical and uncharacteristic of the settlement.
7. Given that, I find that the proposal does represent inappropriate backland development, harmful to the established character of the settlement and area in which it is located, and in conflict with the requirements of Policy 6 of the County Durham Plan, adopted 2020 (the Plan).
8. Having regard to the size and distribution of built form in Etherley Grange, including the varying plot depths and relationship to the road, I do not consider that the location of the proposed dwelling would be detrimental to the *landscape* of the *surrounding* area. The proposed garden area and overall extent of the site, being already in residential use as formal, maintained garden would also not harm the setting of the settlement. In these respects, the proposal would not conflict with Policy 39 of the Plan.
9. Turning to the sustainability of the site and the settlement, I accept that there is a lit walking route to the closest facilities and services, including nearby bus-stops. However, regardless of which distances one prefers in terms of acceptable maxima for practical non-car means of travel, the routes are not, having used them, particularly attractive. The footway is narrow and restricted in places, cars apparently park on the footway, and as is made clear in the evidence around access and highway safety, and consistent with the impression gained on my site visit, traffic speeds are often in excess of the speed limit.
10. Given that, I do consider that the location of the site, and the conditions of the routes around it would likely lead to a reliance on the private-car for day-to-day needs. This would not be sustainable.
11. I note the references to a nearby glamping site which has greater distances from facilities and services. However, holiday accommodation is plainly different in terms of patterns of travel and transport, so the comparison does not alter my conclusions above.
12. As I have found that the site is not a sustainable one for the development proposed, there is conflict with Policies 6 and 29 of the Plan.
13. Overall then, whilst not harming the appearance of the wider area and landscape, having regard to its effects on the character of the immediate area, the settlement and its sustainability, the site is not a suitable one for the development proposed, owing to the conflict with Policies 6, 29 and 39 of the Plan.

Access

14. The appellant takes issue with the local highway authority requiring vision splays appropriate for 85th percentile speeds which are in excess of the speed limit for the road. Whilst there is a clear issue in that with enforcement of speed limits, those speeds do nevertheless apparently reflect observed, measured data at the site. I accept that there is a relatively minor difference between the required and provided splays. However, given the amount of traffic using the road, local traffic, parking and manoeuvring conditions I observed on my site visit, as well as the changes to the vertical alignment of the road on either side of the proposed access, I am not satisfied that it is appropriate in this case, on this site, for me to deviate from the recommendations of the local highway authority.
15. On the matter of build outs into the existing carriageway to realign the kerb line, this detail is unclear from the plans, including the site sections, but for the reasons set out above, as well as the ground levels changes between the highway and the site at the point of access, it is an important issue to resolve or have certainty on.
16. I note the access arrangements for other properties along the road close to the appeal site. I accept that some of these may not meet the standards being applied to this proposal. However, I do not consider that their existence or use is sufficient reason to set aside established technical standards and by extension, adopted policies, in this case.
17. Taking all of the above into account, on the basis of the evidence before me, I cannot conclude that a safe and suitable access can be made to the site, in conflict with Policies 6 and 21 of the Plan.

Safety and stability

18. The appeal site lies within an area subject to past coal mining activity, and an initial objection from the Coal Authority led to concerns over the safety and stability of the site as a result.
19. The appellant has subsequently produced a Coal Mining Risk Assessment, which, meeting the requirements of the Coal Authority, identifies potential risks to the development from past coal mining activity as well as mitigation measures. These include appropriate site investigations and remedial measures, all of which could be secured by condition. The Coal Authority is now satisfied with this information, and on that basis, I agree that the site could be made safe and stable. In this respect, the proposal would not conflict with Policy 32 of the Plan.

Trees

20. The Council has identified two trees in particular on the site, the removal of which would in their view conflict with Policy 40 of the Plan. One of those trees has now been largely removed, but the other remains. I agree with the Council that it is an attractive tree which contributes positively to the locality. Whilst many of the trees and hedges across the site would be retained, as shown on the latest evidence submitted with the appeal, I do consider that the loss of that tree, owing to its size, location and prominence would result in the loss of a tree of high amenity value which makes a positive contribution to the locality.

21. Similarly, the trees and vegetation within the proposed access (G631 on the plans) make a positive contribution to the locality, screening buildings from the road and adding to the overall green and rural character of the area. Their loss would be similarly harmful to the character of the area.
22. Whilst root protection areas and conditions could be imposed in order to protect retained trees, I consider that the loss of trees on the site in connection with the proposal would harm the surrounding landscape and the character of the area. This would be contrary to Policies 6, 29, 39 and 40 of the Plan.

Biodiversity net gain

23. Between the submission of the appeal application to the Council and its validation, following submission of missing plans and information, the statutory requirement for 10% biodiversity net gain (BNG) on small sites such as this, came into force.
24. the appellant suggests that their application was made in advance of the requirement, and it should not therefore be applied. The Council disagrees, on the basis that an application is not made for the purposes of the relevant legislation until such time as it is valid. The Planning Practice Guidance (the PPG) is not definitive on this matter, but the application form did set out the appellant's belief that statutory BNG was not required.
25. Somewhat confusingly, the application was validated with this exemption set out on the application form, which would appear to support the appellant's contention that statutory BNG does not apply. However, conversely, a Preliminary Ecological Appraisal (PEA), which included a "BNG feasibility assessment... undertaken using the Defra statutory small sites metric" (SSM) was submitted by the appellant, which would appear to support the Council's contention that statutory BNG does apply.
26. Whilst the PEA appeared to suggest the ability to deliver a 12.48% BNG, the Council's ecologist raised concerns over errors in the SSM and the need for any habitats created for BNG to be outside private garden space. These concerns have not been satisfactorily addressed in the appeal.
27. Setting aside the issue of whether or not statutory BNG is required, Policy 41 of the Plan requires that new development not cause significant harm to biodiversity and sets the expectation that new development provides net gains for biodiversity.
28. The PEA makes clear that the proposal would result in the loss of 100% of hedgerow units, and 26.59% of area habitat units on the site. Mitigation would be through proposed planting. However, as noted above, the Council's ecologist has raised concerns over the effectiveness of this proposal. Although landscaping is a reserved matter, in light of the concerns of the ecologist and the need for any mitigation planting to be properly provided for in the layout of the proposal, I do consider it to be relevant to consider at this stage.
29. Given the above, it is not necessary for me to resolve the position on statutory BNG. The proposal, on the basis of the evidence before me, conflicts with the Policy 41 requirement to deliver BNG, as uncertainties within the submission mean that I cannot know the proposal would deliver the BNG required by the development plan.

Living conditions

30. Policies in the Plan require development proposals of this nature to not harm the residential amenity of occupiers of neighbouring properties. The proposal would result in a different distant outlook for the occupiers of adjoining properties and would be relatively close to them, owing to the atypical layout discussed above.
31. However, there are differences in level across the site and between it and adjoining properties. In addition, the detail of the design, including its overall scale, the windows, doors and internal layout, coupled with the existing and (controllable by condition) proposed boundary treatments, and the proposed retention of planting could limit any harmful overlooking, loss of privacy or other harm to amenity as a result of any unduly dominant or overbearing appearance, which I do not find the proposal to have.
32. I do not therefore consider that the relationship of the proposal dwelling to others nearby would cause harm to living conditions. In this respect, I therefore find that the proposal would not conflict with Policies 6, 29 or 31 of the Plan. I am also satisfied that it would not conflict with the guidance in the 2023 Residential Amenity Standards Supplementary Planning Document.

Other Matters

33. The appellant suggests that there is an undersupply of housing in the district, as a result of which the presumption in favour of sustainable development set out in paragraph 12dii of the National Planning Policy Framework (the Framework) should apply.
34. Whilst the proposal would deliver a single additional unit, I find that the harms I have identified above, including conflict with development plan policies consistent with the Framework, would significantly and demonstrably outweigh the benefit of that single unit when assessed against policies in the Framework as a whole, having particular regard to key policies for directing development to sustainable locations. As such, the proposal does not benefit from the presumption in favour of sustainable development set out in the Framework.

Conclusion

35. Although the site could be made safe and stable, and the proposal would not cause harm to living conditions, it is not a suitable location, I cannot be certain that it could be suitably accessed, it would have an unacceptable effect on nearby trees and would not deliver biodiversity net gain. Taking all of this into account, I therefore find that the proposal conflicts with the development plan when read as a whole.
36. I have not found any material considerations, including the contents of the Framework to be sufficient to outweigh the development plan conflict, or to indicate that a decision be taken other than in accordance with the development plan.
37. The appeal should therefore be dismissed.

S Dean

INSPECTOR