
Appeal Decision

Site visit made on 2 September 2015

by M Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 March 2016

Appeal Ref: APP/V0728/W/15/3063757

Spencerbeck Farm, Normanby Road, Ormesby, Middlesbrough, TS7 9NS

- 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 Mr Richard Roberts against the decision of Redcar & Cleveland Borough Council.
 - The application Ref R/2013/0803/OOM, dated 26 November 2013, was refused by notice dated 13 January 2015.
 - The development proposed is described as "social housing development to field south of Spencerbeck Farm".
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Procedural Matters

1. The application has been submitted in outline with all matters (access, layout, appearance, landscaping and scale) reserved for later approval. I have dealt with the appeal on this basis, treating the plans submitted as indicative of the type of development that could be carried out
2. The planning application was originally made on the basis of all dwellings within the development being social housing. Further to correspondence with the Council during the course of the planning application, the appellant altered the scheme so that the residential development no longer provided affordable dwellings. Whilst I have noted the reference to the number of dwellings (60) within both the Council's Notice of Decision and the Grounds of Appeal, I am mindful that the appeal is in outline with all matters reserved, and with the details of the development as submitted in illustrative form only. Furthermore, I note that the illustrative plans have subsequently been revised at the appeal stage, with an overall reduction to 41 units, and the augmentation of the tree belts on both the southern and eastern boundaries of the site. As a consequence, and being mindful of the description of development as set out in the Grounds of Appeal, I have determined the appeal on the basis of the following;

"Outline planning permission for residential development"

Decision

3. The appeal is allowed and outline planning permission for residential development is granted at Spencerbeck Farm, Normanby Road, Ormesby, Middlesbrough, TS7 9NS in accordance with the terms of the application Ref R/2013/0803/OOM dated 26 November 2013, subject to the conditions set out in the Annex.

Main Issues

4. The Council refused planning permission for the proposed development on the basis of its adverse impact on land identified within the Development Plan as a green wedge or open area, with the proposals set beyond the development limits. However, whilst not set out as a reason for refusal, it is clear that there is also dispute between the main parties over the position in respect of the provision of affordable housing on the appeal site. On this basis, and having sought further submissions on affordable housing provision from the parties, I conclude that the main issues are
 - whether the proposal accords with Development Plan policies related to the provision of green infrastructure; and,
 - whether the proposed development addresses the need for the provision of affordable housing.

Reasons

Green infrastructure

5. The appeal site is a 1.5 ha. parcel of land currently occupied as grazing land in association with Spencerbeck Farm, the buildings of which are located to the north and west of the 'L-shaped' site. The remainder of the Spencerbeck Farm site has the benefit of an extant residential planning permission which the proposed development would link to. To the west and south of the appeal site are areas of maintained open grass land, with an area of woodland defining the southern boundary to the site. Further to the south are a playground and associated equipment, as well as sports pitches. To the east are the Spencer Beck and a mature belt of tree planting beyond which is an area of residential development.
6. The Council has indicated that the proposed development would encroach into an area which is highlighted as a protected green wedge beyond the defined limits to development. In reaching this conclusion, the Council has cited saved Policy CS23 of the Redcar & Cleveland Core Strategy DPD 2007 (the Core Strategy). The saved policy seeks to ensure protection and enhancement of green wedges in the conurbation, with part (b)(iv) of the policy identifying the Spencer Beck Valley as designated in this manner. Furthermore, the function of the green wedge is set out as seeking to ensure the prevention of urban sprawl and the avoidance of the coalescence of adjoining settlements, through the maintenance of existing open areas acting as buffers. The boundaries of the green wedge are as defined on the 2007 Proposals Map, which was adopted alongside the Core Strategy and the Redcar & Cleveland Development Policies DPD 2007 (the Development DPD).
7. In respect of defining the extent of the green wedges, the Council has advised that the adopted Proposals Map featured both Core Strategy policies and saved policies from the Redcar & Cleveland Local Plan 1999 (the Local Plan). I have carefully considered the submissions of the main parties in respect of any changes in local circumstances and whether aspects of the plan are out of date, particularly in respect of whether any reliance has been placed upon superseded Policy LD3 of the Local Plan in originally defining the boundaries of the green wedge. I have also had regard to the appellant's submissions in respect of the status of the defined green wedge, and whether it was in effect

withdrawn at the time of the Local Plan policy. However, the Development Plan clearly addresses Green Infrastructure through saved Policy CS23 including defining green wedges in the conurbation, and whilst the green wedge may change in the future, this is not an argument for disregarding it at present. I am not therefore persuaded on the basis of the evidence before me that the identification of the green wedge on the adopted Proposals Map should be set aside, particularly in light of the accepted broad consistency of saved Policy CS23 of the Core Strategy with the Framework.

8. Turning to the policy itself, it is evident that the proposed development would result in the erosion of the green wedge as defined on the proposals map. I have noted that part of the existing physical characteristic of the green wedge close to the appeal site is that of a narrowing of the defined area of green wedge and of a pinch point between the existing extent of Spencerbeck Farm and Ainstable Road to the west. I have also taken into account the impact that the existing extant residential planning permission on the adjacent site would have on the green wedge. Nevertheless, I accept that whilst the development of the appeal site would not significantly worsen the width of the existing pinch point or result in a complete loss of the green wedge at this point with an area remaining between the proposed development and Ainstable Road, the impact of the development would result in some additional harm to, and erosion of, the openness of the green wedge.
9. In determining the planning application, the Council has also cited conflict with saved Policy DP1 of the Development DPD. This policy sets out that development beyond defined development limits will be restricted to certain specific criteria, including for those types of development requiring a countryside location, and as a means of containing future development and a clear distinction between urban areas and the countryside. Nevertheless, the Council by its own admission accepts that the issues raised in respect of the countryside and paragraph 55 of the Framework are not significant in this case, but that the policy is engaged in the context of the assessment of impact on the green wedge.
10. On this basis, the proposed development of the appeal site would result in an adverse impact on green infrastructure through the erosion of the existing green wedge. As a consequence, the proposed development would not accord with saved Policy CS23 of the Core Strategy and Policy DP1 of the Development DPD, which seek to ensure the prevention of urban sprawl and the avoidance of the coalescence of adjoining settlements through the maintenance of existing open areas as buffers.

Affordable housing

11. The Council has indicated within both the officer report and their appeal statement that the appellant would be expected to provide 15% affordable housing as part of the development. I am mindful that Policy CS15 of the Core Strategy requires housing proposals of 10 dwellings or more to provide an appropriate mix of housing on site, based on identified and specific housing needs and aspirations identified in the up-to-date local housing assessment. In this respect, the appellant has drawn my attention to correspondence received from the Council during the course of the planning application which quite explicitly sets out that the Council's Housing Strategy team advised there to be no requirement for affordable housing in this location. On the basis of this

advice, the proposed development was changed from providing solely social housing to open market housing only.

12. In setting out the justification for affordable housing, the Council has drawn my attention to the Tees Valley Strategic Housing Market Assessment 2012 (SHMA), which assesses the affordable housing requirements within the Borough. The SHMA specifically projects there to be an unmet affordable housing requirement of 18 units per annum of smaller (1/2 bedroom) general needs units in the immediate area, for the period 2012/13 to 2016/17. I note the appellant's contention that the evidence base for the Affordable Housing SPD is relatively old, and I am mindful on the basis of submissions from both parties that the SHMA is in the process of being updated, albeit that it is not available and has not as yet been published.
13. I have carefully considered both the Council and appellants' positions. I would agree that a not unreasonable stance has been adopted by the appellant in interpreting the advice of the Council's Housing Strategy team to be both up-to-date and site specific in its assessment of the affordable housing requirement. I also note that beyond the reiteration of the content of Policy CS15 of the Core Strategy and the Affordable Housing SPD, the Council has not rebutted in its submissions the position advanced by the Housing Strategy Team. Furthermore, I have had regard to the absence of any definitive evidence provided by the Council regarding up-to-date affordable housing completions or unmet provision within the sub-area, which I would consider to be particularly pertinent in the context of the comparatively high level of completions for 2014-15, as identified in the submitted *Background Technical Paper: Five-Year Housing Need and Land Supply September 2015*. In addition, I find in advance of the publication of the updated SHMA, that the relative age of the existing affordable housing evidence base would not alone provide a reasonable demonstration of an up-to-date identified affordable housing need specific to the site.
14. Whilst the proposed development would not provide affordable housing, I conclude that the Council has not reasonably demonstrated there to be a continued and unmet need for affordable housing within the immediate area, which the proposed development would be required to address. As a consequence, I am satisfied that it has not been demonstrated that there would be conflict with Policy CS15 of the Core Strategy or the Affordable Housing SPD, as details of an up-to-date assessment of the identified affordable housing need for the area have not been provided to justify the requirement for affordable housing.

Other Matters

Other possible harm

15. In reaching my decision, my attention has also been drawn to a previous appeal decision dating from 2003, for residential development within the green wedge, also at Spencerbeck Farm, which was dismissed on the basis of the impact on the green wedge. I have noted the conclusions reached by the Inspector, and I have had regard to the assessment of the proposed development in that case significantly pre-dating the publication of the Framework. In this respect, I am mindful that planning law still requires development be determined in accordance with the development plan, unless material considerations indicate otherwise. However, the Framework

advocates that the planning system play an active role in guiding development to sustainable solutions, and that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. As a consequence, and also as a result of the limited information and detail provided of the earlier appeal proposals, I have not attributed any significant weight to the decision in my determination of this appeal, and have focussed on the planning merits of the case and the evidence placed before me.

16. Local residents have expressed concern about the ability of schools and local infrastructure to accommodate the new development and its effect on highway safety. Nevertheless, I am satisfied on the basis of the submitted evidence and the Council's assessment that there would not be an unacceptable impact on local schools and infrastructure, and I have seen no convincing evidence to indicate that highway safety would be adversely affected. The application is in outline only but there is also no reason to believe that the site could not be developed for residential use without causing overlooking, loss of privacy or other harm to the amenity of neighbouring residents, or unacceptable disturbance during construction. There is also no substantive evidence to indicate that it would be necessary to provide a secondary access across the existing open space to the detriment of the safety of children playing or that the proposed development would result in crime and anti-social behaviour or have an adverse effect on property values. I also note that these are matters which were not explicitly referred to by the Council within the decision notice, and on the basis of the evidence before me I do not consider that these are issues which would direct me to a refusal of planning permission.
17. I have noted that representations have been made to the effect that Mr G & Mrs D Kermodes' (the occupiers of No. 30 Cricket Lane, Normanby) rights under Articles 1 & 8 of the European Convention on Human Rights would be violated if the appeal were allowed. However, I do not consider them to be well-founded because with the proposed development made in outline at this stage, there is no evidence that there would be the alleged impact on privacy highlighted as an impingement to the right to a private family life under Article 8. As expressed above, I am satisfied that an acceptable relationship between the proposed development and No. 30 Cricket Lane, Normanby would be attainable and as a result, there would be no violation of Mr G & Mrs D Kermodes' human rights.

Benefits of the scheme

18. The proposed development would result in the contribution of an anticipated 41 dwellings towards the maintenance of a continuous five-year supply of deliverable housing sites in the Borough. In this respect, I have noted the submissions on the issue of Housing Land Supply and the contentions of both main parties regarding the current level of supply of deliverable housing land and the appellant's concerns over the basis for the Council's Full Objectively Assessed Needs (FOAN). However, irrespective of whether the Council is able to demonstrate an adequate supply, I am alert to the underlying objective of Chapter 6 of the Framework, which is to seek and significantly boost the supply of housing, and ensure choice and competition in the market for land for housing. National policy is that the five year supply of deliverable housing land is a minimum level of supply rather than a target. Whilst I accept that the appeal site has not been allocated as a housing site, I would agree with the

main parties that the site occupies a sustainable location with regards to its access to services, facilities and a variety of modes of transport. I am therefore satisfied that the proposed development would make a positive contribution of additional housing within the area, which would weigh in support of the proposed development.

19. The development would incorporate the retention of a significant band of semi-mature trees on the site, which is proposed to be widened and augmented, and whilst the proposals would result in the loss of much of the existing poor semi-improved grassland, this would not represent the loss of best and most versatile agricultural land. In respect of the impact on biodiversity, whilst I have considered the submissions of interested parties, the appeal site is indicated to be of generally low ecological value, a conclusion on the basis of the evidence with which I would agree. However, the proposals would seek to incorporate measures to enhance the site for biodiversity including the maintenance of commuting opportunities for bats through the enhancement of green space; the inclusion of bat slates with roofs to provide roosting opportunities; the planting of species rich hedgerows and bird and bat boxes; and landscaping to provide structural diversity and the planting of native species of value to wildlife. The enhancement of the biodiversity of the site would be secured by planning conditions and would be in accordance with the objectives of paragraph 118 of the Framework. This is a matter which would clearly weigh in support of the proposed development.
20. I have also had regard to the appellant's stated intent to incorporate within the design and construction of the proposed dwellings energy efficiency measures as well as low carbon and/or renewable sources of heating, particularly taking into account the opportunities for passive solar gain. I note that this would accord with saved Policy DP3 of the Development DPD and also the objectives of Chapter 10 of the Framework addressing the challenge of climate change.

Planning Balance and Conclusion

21. My attention is drawn to the approach of paragraph 49 of the Framework indicating that housing applications should be considered in the context of the presumption in favour of sustainable development. The Framework at paragraph 7 defines there to be three dimensions to sustainable development, expressed as a need for the planning system to perform an environmental, economic, social, and environmental role. These roles are highlighted as mutually dependent and not to be undertaken in isolation.
22. With regards to the environmental role, whilst the proposed development would not amount to an uncharacteristic use of land within the area, I have concluded that the proposals would result in an adverse impact on green infrastructure through the erosion of the existing green wedge, albeit that the proposals would not result in the complete loss of the green wedge. I also note that the appeal site does not represent the loss of best and most versatile agricultural land, and that the widening and augmentation of existing tree and shelter belts on the western boundary of the appeal site would provide visual mitigation of the proposed development in the context of the green wedge. With reference to biodiversity, the proposals would incorporate appropriate mitigation and would not result in harm to protected species or ecological interests, as well as allowing the preservation of protected trees and the opportunity for the enhancement of the site with additional planting. I have

also had regard to the proposed drainage of the appeal site and the absence of objections from the Environment Agency in respect of flood risk, subject to the mitigation secured by appropriate conditions, as well as the incorporation of sustainable and renewable technologies.

23. I consider that the proposed development would provide some limited economic benefit as a result of the creation of employment from the construction of the dwellings, as well as the additions to the local housing market, and that the development would also provide some support to existing local services.
24. Turning to the social role, the proposed development would result in the provision of additional dwellings which would boost the supply of housing, and ensure choice and competition in the market for land for housing, and the site would occupy a sustainable location with regards to its access to services, facilities and a variety of modes of transport.
25. Overall, and whilst I accept that there would be some harm to the green wedge, I am satisfied that on the balance of the matters raised and the environmental, economic and social dimensions of sustainable development as set out in paragraph 7 of the Framework, that the scheme represents sustainable development. Moreover, the harm identified as being caused to the green wedge would not significantly and demonstrably outweigh the development's benefits, particularly in terms of the contribution towards boosting the supply of housing in a sustainable location, and the enhancements to the biodiversity of the appeal site. Consequently, the appeal should be allowed.

Conditions

26. Turning to the suggested conditions, I have considered these in the light of paragraph 206 of the Framework. This paragraph sets out that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
27. I am satisfied that a condition restricting the hours of working on the site would be acceptable and necessary in the interest of maintaining the living conditions of neighbouring occupiers, although I have incorporated clarification that this should also be applicable to the period of site clearance and preparation.
28. A condition addressing ground conditions and the potential for contamination including remediation, would be necessary in the interests of minimising any risks to future users of the land and to controlled waters. Conditions requiring adherence to the mitigation set out in the submitted flood risk assessment, the need for a detailed scheme for the disposal of foul and surface water would be necessary in the interests of flood prevention and the disposal of surface water.
29. The prevention of works to clear vegetation between the months of March and August would ensure protection for nesting birds, whilst the incorporation of mitigation and recommendations set out within the submitted ecological appraisal would be in the interests of ecology. Protective fencing would be necessary in order to provide adequate protection for retained trees during the construction period. The submission of a written scheme of investigation prior to the commencement of development would be in the interests of

archaeology. The Council has suggested a condition related to the incorporation of sustainable/renewable technologies as part of the appeal scheme, which would be in the interest of the sustainability of the site. The Council has also included a condition requiring an 'artist element' as an integral part of the wider development. However, this has not been defined with any preciseness and I am not persuaded on the basis of Policy DP5 of the Development DPD that this would not in the context of the current proposals, be a matter which could be satisfactorily addressed as part of the reserved matters related to detailed design and use of materials. I am not therefore satisfied that the imposition of the condition would be reasonable or necessary.

30. The Council has suggested a series of conditions related to the provision of a scheme of walls and fences, details of external surface materials of the dwellings and hard surface materials, lighting and landscaping of the appeal site. Furthermore, conditions have been included in respect of the removal of permitted development rights for extensions or enlargement of dwellings, means of enclosure, and ancillary curtilage buildings. However, on the basis that the proposed development has been submitted in outline only at this stage, these would be issues more pertinently addressed at the reserved matters stage.

M Seaton

INSPECTOR

Richborough Estates

Annex

Conditions

- 1) Details of the access, appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last of the reserved matters to be approved, whichever is later.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 1000/Location Plan dated November 2013.
- 4) The working hours for all construction and site clearance/preparation activities on this site are limited to between 08:00 and 18:00 Mondays to Friday and 08:00 to 13:00 Saturdays and not at all on a Sunday or Public Holidays.
- 5) No development other than that required to carry out the remediation, shall take place until a site investigation and risk assessment has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The site investigation and risk assessment must be undertaken by competent persons and a written report of the results of the site investigation shall be made available to the local planning authority for approval before any development begins.

If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to remove unacceptable risks to human health, buildings and other property, and the natural and historic environment, and render it suitable for the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development, other than that required to carry out the remediation, begins. Upon completion of remediation, a verification report shall be submitted to and approved by the local planning authority confirming that the site has been remediated in accordance with the approved measures and that the site is suitable for the development hereby permitted.

If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

A monitoring and maintenance scheme to include monitoring of the long-term effectiveness of the proposed remediation over a period of 10 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved,

reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

- 6) No development shall be commenced until the details of the sustainable/renewable technologies to be installed at the development have been submitted to the Local Planning Authority for approval in writing. The approved details shall be implemented in their entirety prior to the first occupation of the each dwelling hereby approved and thereafter maintained.
- 7) Where vegetation clearance has to be undertaken during the period March to August (inclusive), a bird nesting check shall be first undertaken prior to any vegetation clearance to ensure no birds will be affected by the works.
- 8) Development other than setting out and the digging of foundations shall not commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.
- 9) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) 4032/FRA.
- 10) Prior to the commencement of development, a 2 metre high protective fence shall be erected outside the drip line of the trees at the southern and eastern boundaries in accordance with the guidelines set by BS5837: 'Trees in relation to design, demolition and construction 2012', and shall be in place for the duration of the construction period.
- 11) The development hereby approved shall only be carried out in accordance with the mitigation and recommendations outlined in Part G of the Preliminary Ecological Appraisal Spencerbeck Farm Final Document by E3 Ecology Ltd 2014.
- 12) No development shall take place until a programme of Archaeological recording and analysis in accordance with a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority. The programme shall be implemented as approved.