



Appeal Decision

Site visit made on 27 June 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 27 July 2016

Appeal Ref: APP/P2935/W/16/3144374

Land at Southcross Stables, The Croft, Ulgham, Morpeth, Northumberland NE61 3BB

- 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 Peter Richardson against the decision of Northumberland County Council.
 - The application Ref: 15/02767/OUT, dated 19 August 2015, was refused by notice dated 9 December 2015.
 - The development proposed is the erection of up to 25 dwellings (use class C3) with all detailed matters reserved.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I acknowledge the late evidence that was submitted by both parties after the statutory deadline. Despite the fact that full statements of case should be submitted at the beginning of an appeal, without further refinement, I have nevertheless considered the submitted appeal decisions. I find that their divergent conclusions simply illustrate the fact that each case must be judged on its individual merits. As such they have not been determinative in the outcome of this appeal and carry limited weight.
3. The Council has an emerging plan that is being consulted upon which is yet to be examined in public. As its policies have not been tested and bearing in mind the reasons for refusal, this appeal will be determined with principal reference to saved policy S5 of the Northumberland County and National Park Joint Structure Plan 2005 (JSP) and the National Planning Policy Framework 2012 (the Framework). Saved policies C1 and UGC1 of the Castle Morpeth District Local Plan 1991-2006 (2003) have also been cited in the first reason for refusal. However, as this reason is primarily concerned with inappropriate development in the Green Belt, rather than visual impacts on the character and appearance of the open countryside, I do not consider them to be directly relevant to the determination of this appeal for the reasons set out below. The appellant has also given some weight to a number of emerging policies. However, I find that these only carry limited weight as they may still be subject to significant modification and are yet to be found sound.
4. Saved policy S5 of the JSP defines the general extent of the Green Belt extension around Morpeth and states that it will lie 'east of Pegswood' and

'west of Widdington Station'. The Council accept that the precise inner and outer boundaries of this extension can only be confirmed through the emerging plan. Whilst the pre-submission draft has placed the appeal site within the Green Belt, its general extent has a high degree of ambiguity in this particular instance. Moreover, the precise location of the Green Belt boundaries that have been proposed around settlements in the emerging plan are subject to a significant number of unresolved objections. Consequently, whether or not the site can be considered to be in the Green Belt is equivocal at this juncture. Given the stage that the emerging plan has reached and the scale of the proposed development, I am satisfied that its objectives, in relation to Green Belt protection, would not be significantly undermined. As a result I have not given any weight to the first reason for refusal and will therefore, not address the Green Belt as an issue in this appeal.

5. The application was submitted in outline with all matters reserved. This is the basis upon which this appeal has been determined.

Main Issue

6. The Council have withdrawn their second reason for refusal in response to evidence that has been submitted since the application was determined. I have carefully considered this evidence and I am satisfied that the proposal would not cause significant harm to the safe and efficient operation of the highway. Bearing in mind my conclusions in relation to the first reason for refusal, only the third reason for refusal remains a substantive issue in this case. Consequently, the main issue of this appeal is the effect of the proposal on the living conditions of future occupants with regard to potential mine gas exposure.

Reasons

7. The appeal site is situated in open countryside beyond the defined settlement limit of Ulgham, a small village to the north east of Morpeth. It covers an area of approximately 1.5 ha and comprises a series of unkempt grazing paddocks with outbuildings, associated with a former equestrian use, situated in its south-eastern corner. These comprise a number of stables, storage sheds and a hard standing around which the buildings are arranged. The existing access to the site is via a track which passes through the curtilage of the adjacent residential dwelling. This is excluded from the appeal site and indicative plans show that a new access point would be created to the north of this dwelling.
8. The appeal site is within a coalfield high risk referral area where hazards are likely to affect new development. The appellant has submitted a coal mining assessment¹ which indicates that two coal seams are at a shallow depth beneath the site. A moderate risk has been identified in relation to unrecorded shallow mine workings and mine entries as well as from the potential emission of mine gasses. It has been suggested that a programme of mine working stabilisation would control the first two risks. The appellant is of the opinion that impermeable geological deposits might be present that would control the third. However, without more detailed, intrusive site investigation this assertion can only be considered speculative and lacking in substance. Whilst a more robust assessment could be secured through a suitably worded condition,

¹ Coal Mining Risk Assessment. September 2015. Wardell Armstrong.

case law² has established that it is unreasonable to grant permission when significant issues relating to land contamination remain unresolved.

9. More specifically, the Council have drawn my attention to an absence of any mine gas monitoring in the environmental risk assessment³ that was submitted by the appellant and the fact that the coal mining assessment failed to fully assess the potential impacts associated with any such contamination. As the proposed dwellings would have gardens, any hazardous outgassing could not be controlled and would therefore place future occupants at risk. I accept that this issue is commonly encountered in coalfield areas and that conditions can be used to prevent the ingress of gas into buildings, as is clearly the case in the permission that was granted for a residential development to the south of Aiden Grove (Ref:14/03016/FUL). Whilst this would control the accumulation of gas in enclosed spaces an, albeit reduced, risk of exposure would nevertheless remain in gardens.
10. The appellant is of the opinion that a relatively recent appeal decision at Lintonville Road (Ref: APP/P2935/W/15/3131744) demonstrates that a condition relating to mine gas issues is reasonable. However, each case must be judged on its individual merits. The appeal in question was related to a condition requiring the protection of a bus depot against gas ingress where an extensive site-based investigation had already been undertaken. This comprised ground investigation, geotechnical testing and chemical analysis which was further supplemented by the monitoring of soil gasses and groundwater. As the use of the site was not as sensitive and given that the condition was founded on empirical evidence I do not find it similar in all respects and therefore of limited relevance.
11. Paragraph 121 of the Framework advises that planning decisions should ensure that sites are suitable for their proposed use taking into account any hazardous ground conditions resulting from former activities, such as mining. It goes on to advise that adequate site investigation information must be provided by a competent person. In this instance I am not satisfied that sufficient information has been provided and therefore conclude that the proposal would cause significant harm to the living conditions of future occupants with regard to potential mine gas exposure, contrary to paragraph 121 of the Framework.

Other Matter

12. The Council have accepted that they are unable to demonstrate a five-year supply of deliverable housing sites. Under such circumstances paragraph 47 of the Framework advises that relevant policies for the supply of housing should not be considered up-to-date. Consequently, there is a presumption in favour of sustainable development unless the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. The appellant has suggested that the location would be sustainable and that the proposal would boost the supply of housing, meet an identified need for affordable housing and enhance local biodiversity.
13. I note that the services in Ulgham are extremely limited and that future occupants would need to travel in order to meet their day-to-day needs. Given the remote location, this would lead to a degree of reliance on the use of

² R (Technoprint) vs Leeds City Council [2010] EWHC 581 (Admin).

³ Preliminary Environmental Risk Assessment. November 2015. Wardell Armstrong.

private motor vehicles despite the presence of a bus service. Whilst I accept that an alternative means of transport is present, I am not satisfied that it could be relied upon to commute to places of work or access the necessary services in a timely fashion given its infrequent nature, i.e. hourly. Moreover, the use of this bus service and bicycles to support the services in surrounding villages is not supported by any direct observation of the existing behaviour of local residents. Consequently, the location of the proposed development would only have limited environmental benefit. I accept that the proposal would make an, albeit small, contribution towards the supply of housing. In these respects the proposed development would gain some support from the Framework. I find the claims of affordable housing and biodiversity benefits to be equivocal because I have no completed planning obligation before me and because those aspects of the proposal that would deliver any biodiversity benefit are reserved matters that are beyond the scope of this appeal.

14. The benefits, as detailed above, must be balanced against any adverse impacts. Given the harm that would be caused to living conditions of future occupants and having had regard to the policies of the Framework as a whole, I conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. Consequently, it would not amount to a sustainable form of development and would thus be contrary to paragraph 14 of the Framework.

Conclusion

15. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

Roger Catchpole

INSPECTOR