



---

## Appeal Decision

Site visit made on 27 June 2017

**by John Dowsett MA DipURP DipUD MRTPI**

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

**Decision date: 20<sup>th</sup> September 2017**

---

**Appeal Ref: APP/X1355/W/17/3172174**

**Land South of B6287 and West of Eden Terrace, Kirk Merrington, Durham DL16 7LA**

- 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 Initial Group against the decision of Durham County Council.
  - The application Ref: DM/16/03101/OUT, dated 26 September 2016, was refused by notice dated 15 December 2016.
  - The development proposed is a residential development (Use Class C3) of up to 46 dwellings and associated infrastructure.
- 

### Decision

1. The appeal is dismissed.

### Procedural matter

2. The development proposal was submitted in outline with all matters except for access reserved for future approval. An indicative layout plan and parameter plan were submitted with the application, which I have treated as illustrative only.

### Main Issues

3. The main issues in this appeal are:
  - The effect of the proposed development on the character and appearance of the village and surrounding countryside; and
  - Whether the location is suitable for housing having regard to access to shops, services and employment opportunities.

### Reasons

#### *Planning Policy*

4. Policy H8 of the Sedgefield Borough Local Plan 1996 (SBLP) is permissive of development within the residential framework of a number of villages, of which Kirk Merrington is one, which are considered suitable places for housing development because of the facilities available. The supporting text to Policy H8 states that the purpose of the development framework is to balance the need for new housing while maintaining the character of the countryside. Whilst this policy is now of some age, it is broadly consistent with the National Planning Policy Framework (the Framework) which seeks to promote the vitality of main urban areas and patterns of growth to make the fullest use of public transport walking and cycling, whilst recognising the intrinsic character and beauty of the countryside, supporting rural communities, and conserving and enhancing the

natural environment. It also serves to delineate the countryside from built up areas.

5. The appellant suggests that Policy H8 does not align with the framework as it does not show flexibility to adapt to rapid change for the growth of Kirk Merrington with the designation of a residential framework around the existing built up area of the village. To apply this to a particular settlement rather than to the plan area as a whole is, to my mind, perhaps too narrow an interpretation of Paragraph 14 of the Framework. Nonetheless, as the SBLP dates from 1996, the residential frameworks as drawn will not necessarily reflect current levels of development need and in this context Policy H8 is out of date.
6. It is not in dispute that the Council cannot demonstrate a deliverable five year supply of housing land. It is argued that as the Council cannot demonstrate a deliverable five year supply of housing land, that Policy H8 is out of date. Following the Supreme Court Judgement on *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, and Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37*, Policy H8 should not be regarded as a policy for the supply of housing within the terms of the Framework. Rather, as the Court noted, it is the absence of a five year supply of deliverable housing land, which engages Paragraph 14 of the Framework.
7. As it is broadly consistent with the Framework in other respects, moderate weight can therefore still be given to this policy.
8. When read together, Policies E1, D1 and H8 of the SBLP expect a comprehensive and co-ordinated approach to development which takes account of the site's natural and built features and its relationship to adjacent land uses and activities. They also seek to ensure that new development creates a sense of place that incorporates satisfactory landscaping, including existing landscape features, and maintains the character of the countryside. These are consistent with the National Planning Framework, which expects new development to be of a high standard of design that takes the opportunities available for improving the character and quality of an area.

#### *Character and appearance*

9. Kirk Merrington has a hill top location with the land falling away steeply to three sides. This has influenced the built form of the village, with the older parts largely linear in form following the line of the main roads and focussed around two areas of open space. The majority of more recent development has been to the east on a flatter section of land. Most of the development on the extreme western edge of the village, fronting Eden Terrace, is also relatively modern and, due to the location at highest point of the landform, this results in a distinct and strong edge to the village.
10. The surrounding countryside consists of a pattern of medium to large scale fields, some of which retain hedgerow boundaries and a scattering of farm buildings. In addition to trees within the hedgerows, there are small groups of trees within the broader pattern of fields. The wider area contains a number of other settlements although, due to the surrounding landform, Kirk Merrington has the character of a more remote hill top settlement in a rural setting.
11. The appeal site comprises approximately 2.10 hectares of land located to the west of the current built up area of Kirk Merrington. It is described as pasture

land, although at the time of my visit it consisted of tall grasses and did not appear to be in active use. The site slopes to the south and also to the west with a pronounced dip toward the centre. It is bounded by hedgerows to the north and west. To the east and south it has a contiguous boundary with existing buildings in Kirk Merrington that comprises a mix of walls and various styles of fences.

12. The Landscape and Visual Impact Assessment concludes that the proposed development would have a neutral effect on the wider landscape and a minor adverse impact on the appeal site itself. This is, however, contingent on mitigation measures in the form of hedge and tree planting on the site boundaries. Without mitigation the effect on the wider landscape is assessed as minor and adverse and on the site itself moderate and adverse. I would agree with these latter conclusions.
13. The visual impact of the development is assessed as generally adverse without mitigation and with the proposed additional planting is, nevertheless, still assessed as having some adverse effects, particularly in closer range views. Whilst I accept that over time the impacts of the development may diminish if the proposed additional planting becomes properly established, I note that it is expected that it would be some fifteen years before the full effect of the mitigation takes place. This is a significant period of time during which the adverse landscape and visual impacts identified in the LVIA would be experienced in varying degrees.
14. Whilst the appeal site is not within an area covered by any particular landscape designation, this does not mean that it is without any value and the Framework requires that the intrinsic character and beauty of the countryside be recognised.
15. Moreover, the proposed development would extend the built form of the village downslope from the current strong edge formed by the existing buildings on the skyline and erode the distinctive appearance that these create when approached from the west and viewed from the west and south.
16. The position of the proposed access point is some distance from the main built up area of the village and as a result of this visual disconnection, although it is next to existing buildings, the new development would not integrate well with the existing built up area, appearing as an isolated enclave of houses rather than part of the village. It would not create or contribute to a sense of place. Whilst there are two isolated dwellings on Low Road opposite the proposed access point, the accesses to these are relatively low key and informal as opposed to the more heavily engineered access point that would be required for the proposed development.
17. My attention has been drawn to a recent appeal decision at Lanchester<sup>1</sup> where planning permission was granted for residential development in the countryside beyond, but adjacent to the existing physical extent of development. I do not have the full details of this proposal, in particular the number of dwellings proposed. The appeal site in the Lanchester case, at 1 hectare in area, is considerably smaller than this site and it also appears that the development would be accessed through an existing development rather than from an

---

<sup>1</sup> Appeal Reference APP/X1355/W/16/3160472

independent access point. I therefore do not consider that this case is directly analogous to that before me.

18. The proposed development of up to 46 dwellings would increase the number of dwellings in the village by approximately 11%. Given the relatively compact and cohesive form of the settlement as it currently exists, I would concur with the Council's view that the development represents a substantial expansion of the present village.
19. Taken as a whole, the scale of the proposed development and the enduring effects on the landscape and the character of the village would be harmful to the character and appearance of the village and surrounding countryside. It would not comply with the relevant requirements of Policies E1, D1 and H8 of the SBLP or the Framework.

*Whether the location is suitable for housing having regard to access to shops, services and employment opportunities.*

20. It is common ground between the parties that the appeal site lies beyond the residential framework for Kirk Merrington defined by Policy H8 of SBLP.
21. There is a limited range of shops and facilities in the village, but these do not include a food shop or any significant employment opportunities. Consequently, the occupiers of the proposed development are likely to need to travel to meet their day to day requirements. I saw during my site visit that there are bus stops within a reasonable walking distance of the appeal site with reasonably frequent daytime services to the larger settlements of Spennymoor, Ferryhill and Bishop Auckland, although services are more limited in the evenings and at weekends. Whilst Spennymoor and Ferryhill are approximately 3 kilometres from the appeal site, the roads to these are subject to a 60 mph speed limit for much of their length and although there are continuous footways and street lighting, the topography of the surrounding is such that they are unlikely to be attractive as regular cycle routes. Nonetheless, there are alternatives to private car use available to access shops, facilities and employment opportunities.
22. The Framework recognises that the opportunities to maximise sustainable transport solutions will be different in rural situations and, in the light of this, the appeal site would not be so remote from shops, facilities and employment opportunities, as to make it unsuitable for housing.
23. I therefore find no conflict with Policy H8 in this regard.

### **Other matters**

24. The appeal site is adjacent to a small part of the boundary of the Kirk Merrington Conservation Area. From what I saw when I visited the site, due to the degree of separation from the main body of the conservation area, I am satisfied that the development would not have any adverse effect on the character and appearance of the conservation area.
25. I have had regard to a number of letters supporting the proposal that were submitted in respect of the planning application. These in the main raised matters which I have dealt with above and do not lead me to a different conclusion on the main issues.

## Conclusion

26. Although the location would provide an acceptable level of access to shops, services and employment opportunities, the proposal itself would have a significant adverse effect on the character and appearance of the village and surrounding countryside. The proposal conflicts with Policies E1, D1 and H8 of the SBLP and is, therefore, contrary to the Development Plan as a whole.
27. The Framework is clear that it does not change the statutory status of the development plan and that development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. This reflects section 38(6) of the Planning and Compulsory Purchase Act 2004.
28. Paragraph 49 of the Framework requires that applications such as this should be considered within the context of the presumption in favour of sustainable development. Thus, even though this proposal does not accord with the development plan, it falls to be considered on the basis 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.
29. The Council states that it has between 4.2 and 4.9 years supply of housing land, and the proposed development of 46 dwellings would go some way to addressing the shortfall. It would also be consistent with the requirement of the Framework to boost the supply of housing. Through the completed planning obligation, 10% of the housing units would be provided as affordable housing. This carries substantial weight.
30. I also recognise that there would be some economic benefits arising from the development in the form of investment and employment created during the construction period, and the potential spending by future occupiers supporting those facilities that exist in the village.
31. However, the Framework makes it clear that the economic, social and environmental roles of sustainable development are mutually dependent and I have found that the proposed development would cause lasting environmental harm due to its effect on the landscape and the character and appearance of the village. This weighs heavily against the proposal to the extent that it clearly and demonstrably outweighs the benefits. Consequently, the proposal cannot be considered to constitute sustainable development as defined in the Framework.
32. For the reasons given above, and taking all other matters into account, I conclude that the development would be contrary to the relevant policies of the Council's Development Plan and there are no material considerations of such weight as to warrant a decision other than in accordance with the Development Plan. Therefore, the appeal should be dismissed.

*John Dowsett*

INSPECTOR