



Appeal Decision

Hearing Held on 14 and 15 February 2018

Site visit made on 15 February 2018

by Sarah Housden BA (Hons) BPI MRTPI

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

Decision date: 30 April 2018

Appeal Ref: APP/Z2315/W/17/3173214

Land to the South of Brownside Road, Brownside Burnley

- 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 Seddon Homes Ltd & H & F Eccles and Son against the decision of Burnley Borough Council.
 - The application Ref APP/2016/0416, dated 16 September 2016, was refused by notice dated 24 March 2017.
 - The development proposed is 'outline application for residential development of up to 39 dwellings including details of means of access (all other matters reserved for future approval)'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved for subsequent approval with the exception of the means of access. An illustrative masterplan¹ and parameter plan² accompanied the application together with a proposed access plan. These show the location of the main access road, the general layout of new housing and landscape areas and how different building heights would be located within the site. Whilst not formally part of the scheme, I have treated these plans as a guide to how the site might be developed, were the appeal to succeed.
3. The appellant submitted a proposed refined parameter plan³ with the appeal. This clarified the extent of the land to accommodate the access road and landscape treatment. As the application is in outline only and the site area shown on the refined parameter plan is the same, the interests of people who commented on the proposal would not be prejudiced by not having had an opportunity to comment on the revised plan. I have therefore taken it into account in my decision.
4. A completed planning obligation by Deed of Agreement pursuant to section 106 of the Town and Country Planning Act 1990 dated 9 March 2018 (the s106 Agreement) was submitted after the hearing. It would secure up to 10% of the

¹ Drawing No 601A 40D

² Drawing No 601A 23F

³ Drawing No 601A 23H

final number of dwellings as affordable housing to be delivered either on-site or as a financial contribution to off-site provision together with contributions to secondary education, off-site public open space, improvements to bus stops outside the site entrance and sustainable transport. Payments towards affordable housing and public open space are justified to meet the requirements of Policies H5 and H7 respectively of the Burnley Local Plan Second Review (2006) (LP). Had the appeal been allowed, the provisions of the s106 Agreement would have been necessary to enable the development to proceed and I am satisfied that the tests set out in paragraph 204 of the Framework have been met.

5. The Council submitted the Burnley Local Plan (BLP) for Examination on 20 July 2017, following the determination of the planning application. The Examination hearing sessions concluded in November 2017 and on 23 January 2018 the Inspector issued a letter instructing the Council to prepare a schedule of Main Modifications (MMs). The Inspector's letter and schedule were submitted as hearing documents. The Council subsequently forwarded the Schedule of Proposed Main Modifications and Proposed Policies Maps changes. However, it has not been necessary for me to make any further reference to these two documents given the approach to 5 year housing land supply (5YHLS) set out in my decision below and they have had no bearing on the outcome of this appeal.
6. Nevertheless, the BLP is at an advanced stage of preparation and I assess the weight to be given to its emerging policies in my decision.
7. The proposed development was reduced from 47 dwellings to 39 dwellings during the course of the planning application and the delivery of public open space was changed from on-site provision to a financial contribution towards off-site facilities. I have assessed the proposal on the basis of the reduced scheme.

Main Issues

8. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

Policy Context and 5YHLS

9. The LP covered the period from 2001 to 2016. Nevertheless, a number of its policies have been saved and these comprise the development plan for the purposes of this appeal. Paragraph 215 of the National Planning Policy Framework (the Framework) states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework - the closer the policies in the plan to those in the Framework, the greater the weight that may be given.
10. For the purposes of planning policy, the appeal site is outside the Burnley Urban Boundary in the LP and falls within the Rural Area. LP Policy GP2 restricts new development within the Rural Area to specific categories, none of which apply to the appeal proposal. The development boundary which identifies the area within which Policy GP2 applies was established in the LP to accommodate development needs up to 2016. That boundary can no longer be considered up to date because it does not reflect an up to date assessment of

housing need. For that reason I consider that Policy GP2 is out of date. This means that the approach set out in the second bullet point of the 'decision taking' section of paragraph 14 of the Framework is engaged. I return to the weight to be given to the conflict with LP Policy GP2 later in my decision.

11. LP Policy E27 seeks the protection, enhancement and restoration of the Borough's distinctive landscape character by requiring that new development protects the setting of rural and urban settlements together with historic field patterns including walls and hedgerows. The appellants consider that the requirement of LP Policy E27 to 'protect' the countryside is more onerous than the Framework which at paragraph 17 makes reference to 'recognising' the intrinsic character and beauty of the countryside as a core planning principle. However, LP Policy E27 also sets out a number of criteria to safeguard and enhance particular landscape features and this approach is in accordance with paragraph 113 of the Framework. As such, LP Policy E27 is broadly consistent with the Framework and I attach significant weight to it in the determination of this appeal.
12. Whilst not specifically referred to in the reasons for refusal, the Council has referred me to the emerging BLP Policy SP4 which sets out the development strategy for the Borough in accordance with the settlement hierarchy. It also indicates that development in the countryside will be strictly controlled and that proposals should not lead to the coalescence of settlements.
13. Although the BLP is at an advanced stage of preparation, consultation on the MMs has yet to be completed. I have no further evidence of the extent of any unresolved objections to Policy SP4. Having regard to paragraph 216 of the Framework, I attach limited weight to Policy SP4 in coming to my decision.
14. The Council's latest calculations on the 5YHLS are set out in the Housing Land Supply Statement July 2017 (HLSS) for the relevant five year period 1 April 2017 to 31 March 2022. The 5YHLS remained a matter of dispute between the parties in relation to both the requirement and the amount of the deliverable supply. The positions of the parties in relation to both matters were set out in a number of documents submitted during the hearing.
15. It was common ground between the parties that the BLP sets out a housing requirement of 209 dwellings per year. However, the schedule of BLP MMs includes an MM to reduce the annual average housing requirement from 209 to 194 dwellings per year. That MM is subject to further consultation. However, the figure is based on an up to date assessment of need and has emerged through the BLP Examination. I consider that it provides the most reliable estimate of the housing requirement and the starting point for the purposes of assessing the 5YHLS for this appeal is therefore 194 dwellings per year. That was the basis on which further evidence in respect of the 5YHLS was presented by both parties at the hearing. The BLP Inspector's letter indicates that a 5% buffer would be appropriate.
16. Based on 194 dwellings per year as the 'starting point', the re-occupation of 148 empty homes and a 5% buffer applied after the shortfall, the Council's and appellants' housing requirement figures for the relevant 5 year period were almost identical at 235 and 236 dwellings per year respectively.
17. I note that the BLP Inspector considered that the plan would make adequate provision for housing over the plan period and would provide for a 5 year

supply. This was not accepted by the appellant, who questioned the delivery trajectory for some of the sites.

18. Based on a 5 year housing requirement of 236 dwellings per year and the appellants' total estimate of supply of 933 dwellings, the 5YHLS would be around 4 years. Even if I were to conclude that the appellants approach is to be preferred, and that there is a shortfall in housing supply on the scale suggested, it would not alter the outcome of the appeal. For reasons explained below, I consider that the adverse impacts of granting permission would still significantly and demonstrably outweigh the benefits. Consequently, it is not necessary for me to comment further on the difference between the Council and the appellant on the supply side.

Character and appearance

19. The appeal site covers approximately 1.5 hectares and comprises part of a larger grazing field to the east of Brownside. Ground levels rise gradually from west to east and from the road frontage towards the south. The boundary to the road frontage comprises a post and wire fence with the remains of a dry stone wall at ground level. The common boundaries between the appeal site and the rear gardens of the properties on Lindsay Park comprise a mixture of fences and hedges. The south and east boundaries of the appeal site are not delineated by any physical features on the ground.
20. The historic core of Brownside developed around the Brownside Sheds and the traditional workers' cottages to the east of Brownside Bridge which were connected with the cotton industry. The river and bridge crossing create a limited degree of separation between the urban area of Burnley and Brownside. More recent estate development to the north and south of Brownside Road has created a suburban character and appearance so that Brownside appears contiguous with the urban area of Burnley rather than as a separate settlement.
21. Worsthorne and Brownside are both located within the parish of Worsthorne-with-Hurstwood and the appellants' view is that the appeal site forms part of an open gap that separates one part of Worsthorne village from another. However, the gap between Brownside and Worsthorne forms part of the transition from Brownside to the more dispersed rural settlement pattern to the east of Burnley. The open field within which the appeal site is located creates a striking and clear demarcation between the more densely built-up urban area and the adjoining open countryside.
22. Although the primary school playing field is outside the Worsthorne urban boundary, the metal railings and mature trees along the west boundary and the timber fence and hedging to the road frontage create an enclosed character and appearance. Due to a combination of the boundary features, intensive cultivation, presence of play structures and raised landform, the playing field relates more closely to the built-up area of Worsthorne rather than the undeveloped gap. Travelling out of Worsthorne, the appeal site forms part of the attractive and spacious green edge to the built-up area of Brownside.
23. The Public Right of Way to the east of the site (PROW 12/11/10) connects Brownside Road with PROW 12/11/09 which runs from west to east between Lindsay Park and Worsthorne village. At the time of my site visit PROW 12/11/10 did not appear to be well used, which is in part likely to be due to the

- boggy ground conditions. From both PROWs the site is viewed as part of the larger field and there are longer distance panoramic views to the wider landscape, creating a visual connection between the site and its landscape setting.
24. Whilst concurring with the appellants' point that the site has no significant individual landscape features, it is an integral component of the Calder Valley Landscape Character Area (LCA)⁴. The distinctive characteristics of the LCA include improved pastures with stone wall boundaries and a settled pattern of development including farms, mills and associated workers dwellings. The field structure within which the site is located is one of the key characteristics of the LCA.
25. The Landscape and Visual Impact Assessment (LVIA) prepared in accordance with the Guidelines for Landscape and Visual Impact Assessment 3rd Edition (GLVIA) assesses the value of the wider landscape as medium. Due to the proximity of the site to urban development, the magnitude of effect on the wider landscape character as a result of the proposal is assessed as minor-moderate.
26. From the more distant viewpoints to the north in the LVIA, the intervening topography, built form and vegetation limit direct views of the site. From the south, the distinctive settlement pattern including the separation between Brownside and Worsthorne is visible from the viewpoints identified in the LVIA on Red Lees Road and the southern end of Salterford Lane. However, from these vantage points the development would be seen in the context of the existing pattern of development and the perception of coalescence would be minimal. I agree with the LVIA findings that from these vantage points the visual changes to the view would be minor adverse reducing to negligible on completion.
27. However, at closer distances there would be substantial changes to the character and appearance of the site from the presence of dwellings, the new access road and changes to vegetation and landform. The development would have a significant urbanising effect, extending the built-up area of Brownside towards Worsthorne. The reduction in the extent of the open gap between Brownside and Worsthorne would diminish their identity as separate settlements and would be harmful to the rural setting of Worsthorne and the spacious green edge of Brownside.
28. The appellants submit that the proposals outlined in the refined parameter plan including hedge planting and the landscape corridor along the eastern boundary would help to assimilate the development into the landscape. As illustrated on the parameter plan, dwellings in the south-east corner would be laid out and limited to a height of 7 metres in order to maintain views of the wider landscape to the south. Conditions could be imposed to ensure that the details of the reserved matters reflect the design and layout principles of the illustrative masterplan and parameter plan.
29. I acknowledge the appellants' point that the current view of fences and other structures on the rear boundaries of the properties on Lindsay Park has a somewhat suburban appearance. However, the dwellings are positioned at a lower level than the appeal site so that, when seen from Brownside Road, the

⁴ A Landscape Strategy for Lancashire -Lancashire Landscape Character Assessment Lancashire County Council

- rooftops are the predominant feature. In contrast, dwellings on the appeal site would be more prominent and conspicuous due to their position on higher ground.
30. The proposal to limit dwelling heights to 7 metres within the south-east corner of the site would also enable part of the view of the wider landscape to be retained from the vantage point of Brownside Road. However, the development would be a dominant feature within that vista and when viewed from both Brownside Road and the PROWs, the presence of buildings in the foreground of views towards the wider landscape would have a significant adverse effect on landscape and scenic quality.
31. The site is a component of the Calder Valley LCA and also affords opportunities for appreciation of the wider landscape beyond the immediate surroundings. In that context, it makes an important contribution to scenic quality. The experience and enjoyment of footpath users on PROW 12/11/10 would be harmed by the proximity of the developed edge, notwithstanding the landscape corridor along the eastern boundary. I recognise that my view differs from the Council's PROW officer who concluded that the level of harm to users would not be significant but my conclusion is based on the evidence before me and the site visits I conducted as part of the appeal.
32. Whilst it does not specifically refer to preventing coalescence, LP Policy E27 seeks to protect the setting of rural and urban settlements. The open agricultural land between Brownside and Worsthorne forms part of the transition to the more dispersed settlement pattern characteristic of the rural parts of the Borough to the east of Burnley. Development of the site would be harmful to the settings of both Brownside and Worsthorne and would also result in the loss of a field structure which is characteristic of the Calder Valley LCA.
33. Planning permission has been granted for residential development opposite Worsthorne Primary School which would extend to the north beyond the adjoining terrace. However, the trees on the western boundary of that site create a more enclosed appearance compared with the open character of the appeal site and the circumstances of the two sites are not comparable.
34. I conclude that the development would reduce the separation between Brownside and Worsthorne and thereby fail to protect the distinctive setting of these settlements. The harm to the character and appearance of the area, and to the characteristics of the Calder Valley LCA would be in conflict with LP Policy E27. My conclusion on this issue attracts substantial weight against the appeal proposal.

Other matters

35. The issue of school capacity was raised in representations. The Education Authority sought contributions to increase secondary school capacity and provision for this has been secured through the s106 Agreement. There was no requirement for contributions towards primary school provision.
36. I have had regard to the other concerns expressed by local residents, the Parish Council and Worsthorne Primary School Governing Body in representations made to both the planning application and appeal. These covered a number of points including the effect on highway and pedestrian

safety, biodiversity, loss of privacy, flood risk, drainage and ground conditions. However, as the appeal is being dismissed for other reasons I make no further comments on these matters.

Planning Balance and Conclusion

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for any determination, the determination must be made in accordance with the plan unless material considerations indicate otherwise. I have concluded that the proposal would conflict with LP Policies GP2 and E27. These conflicts are of sufficient importance that the proposal should be regarded as being in conflict with the development plan as a whole.
38. The Framework is an important material consideration. LP Policy GP2 cannot be regarded as up to date because it is based on settlement boundaries which do not reflect an up to date assessment of housing need. Consequently, I attach only moderate weight to the conflict with Policy GP2. Moreover, this means that the approach set out in the second bullet point of the 'decision taking' section of paragraph 14 of the Framework is engaged and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole.
39. It is agreed between the parties that the development would be in a sustainable location and I have no reason to disagree with that assessment. The shops and services at the Brunshaw Road roundabout would be marginally beyond the 800m desirable walking distance but the services and facilities in Worsthorne would be within easy walking distance along well-lit footpaths. Bus services to Burnley and further afield would be easily accessible from outside the site.
40. The appeal proposal would offer a number of other benefits. It would increase the supply and choice of housing. Although I have not found it necessary to conclude on the 5YHLS, for the purposes of this planning balance I have assumed that there is a shortfall of the scale suggested by the appellants. The s106 Agreement would secure a financial contribution towards affordable housing equivalent to 10% of the final number of dwellings. The appellant confirmed that the scheme could make an early contribution to the 5YHLS given the developer interest in the site.
41. The contribution to the economic dimension of sustainable development would include the jobs created during construction and receipts from the New Homes Bonus and Council Tax. Local residents would also be likely to spend money on goods and services in the area, supporting the local economy. I afford the social and economic benefits significant weight in favour of the appeal.
42. The s106 Agreement contributions to education, public open space and cycle vouchers would mitigate the impact of the proposed development and are neutral factors in the overall planning balance. The provision in the s106 Agreement for improvements to bus stops outside the site would support the use of public transport by residents including the wider community and I attach moderate weight in favour of this as a benefit of the scheme.

43. However, the undeveloped gap between Brownside and Worsthorne would be significantly diminished which would be harmful to the character and appearance of the area. This aspect of the proposal would be contrary to LP Policy E27 which is consistent with the Framework and to which I attach significant weight. On balance, I conclude that the combination of harm arising from the conflict with the development plan and the harm to the environmental dimension of sustainable development would significantly and demonstrably outweigh the social and economic benefits of the development. As such, the proposal would not comprise sustainable development when assessed against the Framework read as a whole. In these circumstances, there are no material considerations to justify making a decision other than in accordance with the development plan.
44. For the reasons outlined above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Sarah Housden

INSPECTOR

Richborough Estates

APPEARANCES

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| FOR THE APPELLANT: | |
| Ms M Ellis of Counsel | |
| Mr D Hann | Director, Indigo Planning |
| Ms A James | Associate, Indigo Planning |
| Ms P Randall | Randall Thorp Landscape Architects |
| Ms C Wheedon | Randall Thorp Landscape Architects |
| FOR THE LOCAL PLANNING AUTHORITY | |
| Mr G Thorpe | Planning Team Manager |
| Mr P Milward | Principal Planning Policy Officer |
| INTERESTED PERSONS | |
| V Roose | Local resident |
| P Frost Hardwick | Local resident |
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DOCUMENTS SUBMITTED DURING THE HEARING

1. Table of Site Allocations – July 2017 Housing Position Statement and Latest Trajectory with Additional Local Planning Authority comments
2. Table of Sites with Planning Permission Under Construction (as of 13.2.18) with Additional Local Planning Authority comments
3. Inspector’s Letter re Examination of the Burnley Local Plan dated 24.1.18 – Outline of Main Modifications
4. Burnley Local Plan Examination – Inspector’s Note – Outline of Main Modifications Required
5. Brownside Road Appeal – Housing Land Supply Scenarios (14.2.18)
6. Housing Requirement using 194 dpa (February 2018)
7. Updated List of Conditions
8. Burnley Local Plan Five Year Supply Assessments – Main Modification 5
9. Burnley Local Plan Adopted 2006
10. Burnley’s Local Plan Proposed Submission Document March 2017

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

11. Executed Deed of Planning Obligation by Agreement Under Section 106 dated 9 March 2018

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