



Appeal Decision

Site visit made on 16 October 2018

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 November 2018

Appeal Ref: APP/P2935/W/18/3203942

Site between Tynedale and Dyke House to the north of The Avenue, Medburn, Northumberland

- 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 Ethical Partnership against the decision of Northumberland County Council.
 - The application Ref 16/03778/OUT, dated 7 October 2016, was refused by notice dated 7 December 2017.
 - The development proposed is up to 16 dwellings with all matters reserved apart from access.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 16 dwellings with all matters reserved apart from access at site between Tynedale and Dyke House to the north of The Avenue, Medburn, Northumberland in accordance with the terms of the application, Ref 16/03778/OUT, dated 7 October 2016, subject to the conditions set out in the schedule attached to this decision letter.

Application for costs

2. An application for costs was made by Ethical Partnership against Northumberland County Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted in outline including consideration of access, with matters of appearance, layout, landscaping and scale reserved for future consideration. I have dealt with the appeal on that basis, treating any details of reserved matters shown on the plans as being illustrative.
4. Since the Council took its decision and appeal was made, a revised version of the National Planning Policy Framework (the Framework) has been published and I have therefore determined the appeal in light of the revised Framework. The main parties are aware of the changes and had the opportunity to comment on the revisions where they may be relevant to this appeal.
5. The address provided on the application form only referred to the street name and two nearby existing dwellings. In the interests of clarity I have added the name of the settlement and County from the Council's decision notice to the address in the heading above and in my decision.

6. The Council advise that they no longer wish to defend reasons for refusal related to the absence of affordable housing and education contributions in light of the appellant's Planning Obligation which makes provision for those matters.

Main Issues

7. Therefore, the main issues raised by the appeal are whether the appeal site is in an appropriate location for housing development, the effect the development would have on road safety and the effect the development would have on the character and appearance of the area.

Reasons

8. The appeal site is a field with an intervening site with houses under construction lying between it and The Avenue. Rows of large houses of a recently constructed appearance extend to the north of The Avenue to either side of the site with countryside lying to the north. The development would be accessed through the intervening housing site.

Location

9. Local Plan¹ (LP) Policy MBH2 permits development in certain parts of Medburn subject to detailed criteria but on the basis that it is infill development on brownfield sites. There is no suggestion that the appeal site is previously developed, brownfield land and the supporting text to the policy establishes that the infilling relates to small gaps within an otherwise built up frontage, circumstances different to the appeal proposal. The development would consequently not accord with LP Policy MBH2.
10. Two appeal decisions² relating to housing development in Medburn have been cited by the appellant. Although those decisions were made some time ago and there are material differences between those sites and the appeal site, it is of note that at the time Inspectors in both cases found the LP out of date in some respects in light of the (2012) Framework and the circumstances of development in Medburn at that time.
11. The Council advise that since the latter of the appeal decisions, over one hundred dwellings have been approved in Medburn. There is no detailed information before me as to whether all those dwellings were in locations which would have been contrary to LP Policy MBH2 or what particular considerations led to their being acceptable. Nevertheless, it is clear that a significant volume of housing has been approved within Medburn over the last five years and that in those cases the decision makers found that the location was acceptable.
12. Whilst I do not have the details of these other dwellings before me, on the basis of the submissions which are, there is support for the appellant's assertion that at least some of these are in the area of Medburn covered by LP Policy MBH2 and which were not either infill development or on brownfield land. There is no evidence to support the Council's contention that the additional dwellings represented by the appeal development would change Medburn from a settlement which had previously been considered a sustainable

¹ Castle Morpeth District Local Plan, 2003.

² APP/P2935/A/12/2176272 and APP/P2935/A/13/2195890.

location for housing development to one which would no longer be suitable in that respect.

13. The settlement does not have services or facilities. Alternatives to private car use would appear to be limited but not absent, including some limited bus services. Shops and services in Ponteland and Darras Hall are not so distant that they could not be reached by alternative modes. I note that the Inspectors in the aforementioned appeal decisions reached similar conclusions on this matter and I have not been presented with any evidence that circumstances have materially changed.
14. The Framework notes, in the context of rural housing, that development in one village may support services in a village nearby. It also points out that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, which should be taken into account in decision-making.
15. The conflict with LP Policy MBH2 therefore carries limited weight whereas the fact that a significant amount of other housing development in Medburn has been found to be acceptable without any evident change in circumstances carries considerable weight in favour of the development. These considerations indicate that a decision other than in accordance with the development plan should be taken in this respect and in this instance.

Highway safety

16. The Avenue is a private road which is narrow along significant lengths and is reported to be in poor state of repair. From my observations it serves a considerable number of existing houses and there are houses under construction which would also be served by it. I have some sympathy for users of The Avenue, particularly those who have lived in the vicinity or some time, in respect of the considerable inconvenience that they report relating to additional traffic, including construction traffic, using the narrow road, as well as the frustrations and uncertainties about maintenance and responsibility for The Avenue.
17. However, bearing in mind the constrained nature of The Avenue, there is no technical evidence that the development would result in material harm to the safety of any users of the road itself where its narrow width and sharp corners would be likely to require all vehicle traffic to progress at slow speeds and with care. Furthermore, the development would be accessed via a site also served by The Avenue which the Council advise was recently granted planning permission.
18. From my observations, the junction of The Avenue with the C345 road has some limits to visibility in both directions particularly for drivers of vehicles exiting The Avenue and I note that this concurs with the Council's assessment. However, there is no evidence that this arrangement is one which is necessarily unsafe, particularly in light of reports in the Council's Committee Report that the C345 can be regarded as being "relatively lightly trafficked" based on a survey. Whilst the potential number of additional vehicle movements arising from the development would not be insignificant, there is no technical evidence that it would be likely to give rise to any material adverse effects on any road users. Similarly, considered in the context of the existing and proposed dwellings which would use The Avenue, there is no technical evidence that demonstrates that the effects of the appeal development would be of a

magnitude that would materially alter traffic conditions, including cumulative effects.

19. As there would not be an unacceptable impact on highway safety or severe impacts on the road network the development would avoid the only circumstances which the Framework advises that development should be prevented or refused on highways grounds.

Character and appearance

20. From my observations Medburn's character is derived in part from an incremental pattern of development of generally large dwellings. Whilst older ones are largely set in sizeable gardens some more recent buildings are located much closer to one another. The Council highlights the low density and linear form of development to the north of The Avenue. Although the rows of substantial dwellings arranged perpendicular to The Avenue form part of the developed character of the area it does not appear exclusively so. It is of note that the layout of the site under construction next to the appeal site has a less formal arrangement and is served by a more sinuous road layout.
21. The appearance, layout, landscaping and scale of the development are reserved matters, although an indicative arrangement has been provided. Given the size and shape of the site, I am not persuaded that the appellant would necessarily be tied to such a configuration as the only layout which could be accommodated. Furthermore the Council have not directed me to any policy, local design standards, style guides or similar that would indicate that it would be inappropriate to consider development in the absence of the reserved matters. There is no evidence that an acceptable scheme would not be capable of being advanced at the reserved matters stage.
22. Consequently, as it has not been demonstrated that the development would result in poor design that fails to take the opportunities available for improving the character and quality of an area, the development would avoid circumstances where the Framework anticipates rejecting development on design grounds. There would be no conflict in this respect with the criteria of LP Policy MBH2 which relate to trees, drainage and neighbours' living conditions.

Planning Obligation

23. The appellant has provided planning obligations in the form of an Unilateral Undertaking (UU). These would provide an education contribution of £39,600 to provide spaces at a specified school and an affordable housing contribution, the latter to be calculated in accordance with the Council's protocol at the reserved matters stage.
24. On the basis of the evidence before me those elements of the UU are necessary to make the scheme acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the proposal or, in the case of the affordable housing contribution, the UU contains a mechanism to ensure that it would be. Therefore, in light of the evidence, the Obligations meet the Framework policy and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. They can therefore be taken into account.

Overall Balance

25. There would be benefits in the form of the delivery of new homes and in particular the contribution to affordable housing which carries weight in support of the proposal. Although the appellant considers that the Council would receive New Homes Bonus for new dwellings, this is not something I have taken into account bearing in mind the Planning Practice Guidance (PPG) that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority.
26. There would not be materially harmful effects in terms of the location of the development, its effects on character and appearance nor on highway safety. Nevertheless the development would not accord with LP Policy MBH2, albeit that the conflict with this policy carries limited weight. This is a policy which, on the basis of the Council's decision, is one which is most important for determining the application. However, that policy cannot be considered up to date and these are circumstances where the presumption in favour of sustainable development in the Framework requires planning permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. In this case adverse impacts would not.
27. I have determined the appeal on its own merits but the consideration of other planning permissions in the vicinity carry considerable weight in favour of the development and in this particular case indicate that the development plan should not be followed.

Other Matters

28. Although the matters are reserved, given the size of the site and the relative situation of existing dwellings and those under construction nearby, there is no evidence to suggest that a layout, appearance and scale could not be achieved that would avoid any harmful effects on the living conditions of current or future occupiers. I note that the Council reached a similar conclusion in this respect. The inconvenience and frustrations which may arise from the use of The Avenue have not been demonstrated to be of such a magnitude as a result of the appeal proposal that they would materially harm residents' living conditions to an extent which would warrant refusing permission.

Conditions

29. The Council have provided, without prejudice, suggested conditions were the appeal to be allowed and I have considered these making appropriate changes in light of the PPG. It is necessary to specify the approved plan as this provides certainty. Although the Council have referred to revision 01 of the location plan, unlike revision 02 this does not include the access route and I have therefore specified the latter.
30. A Construction Method Statement will help to limit disruption to existing residents and avoid harmful effects on highway safety arising. In order to ensure that foul and surface water is disposed of appropriately it is necessary to require that a sustainable drainage scheme is implemented and that foul water drainage is approved. In order to ensure there are no adverse effects on wildlife and habitats it is necessary to manage excavations to avoid wildlife being trapped as well as implement mitigation measures in the appellant's Ecological Assessment. The Council's suggested condition included a

requirement for an updated survey should development not commence by May 2018. As this deadline has passed I have amended the condition to require such an update. The measures included the avoidance of removing hedges in the nesting season and it is not necessary to require this by a separate condition. It is necessary to protect trees which overhang the site from potential construction damage to preserve that aspect of the area's character and appearance.

31. It is necessary to ensure that arrangements for parking are adequate and that appropriate provision for alternative modes in the form of cycling is provided. To ensure that safe and convenient access is provided within the site it is necessary to require that the proposed streets are managed in accordance with an approved scheme. Requiring refuse storage arrangements to be approved will avoid harmful effects on occupiers' living conditions.
32. The Council have suggested a condition to prevent pollution to watercourses however it references guidance which was withdrawn in 2015. In any event, this is something which is enforced under other legislation and there is no evidence that it is necessary to attach a planning condition in this respect. As landscaping is a reserved matter and the submission of details are required by condition 1) it is not necessary to attach a separate condition in this respect.

Conclusion

33. For the above reasons the development would be in an appropriate location for housing development and would not harm highway safety nor the character and appearance of the area, and would accord with the Framework. These and other considerations indicate that a decision should be taken which is not in accordance with the development plan. The appeal is therefore allowed.

Geoff Underwood

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Drawing No. A001-01 Rev 02: Location Plan.

- 5) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- i) details of temporary traffic management measures, temporary access, routes and the vehicles that will use them;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) vehicle cleaning and wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction; and,
 - vii) delivery and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No development shall take place until a scheme to dispose of surface water from the development has been submitted to and approved in writing by the local planning authority. This scheme shall:
- i) Restrict discharge from the development to 4l/s for all rainfall events up to and including the 1 in 100 year event.
 - ii) Adhere to the principles as set out in the drainage strategy from 3E drawing referenced - P16-038-3E-00-XX-DR-C-1201 Rev P3.
 - iii) Provide attenuation on site for the 1 in 100 year plus climate change event (+40%) and an allowance for urban creep.
 - iv) Incorporate source control and site control SuDS. Namely, vegetated sustainable drainage techniques throughout the development wherever possible and practicable, justification for alternatives should be by means of a viability assessment.
 - v) Provide a management and maintenance plan for the lifetime of the development which shall include a timetable for its implementation and the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The scheme shall be implemented prior to the first occupation of any dwelling hereby permitted and thereafter managed and maintained in accordance with the approved scheme and details.

- 7) No development shall take place until a detailed scheme for the disposal of foul water from the development hereby permitted 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 and no dwelling shall be occupied until the scheme has been implemented.
- 8) No development shall take place until an update to the Ecological Assessment - Land at Medburn, Ethical Partnership Ltd, September 2016, has been carried out and submitted to and approved in writing by the local planning authority. Thereafter development shall only take place in accordance with the mitigation measures detailed within the approved updated Assessment including, but not restricted to, adherence to timing restrictions including those for hedgerow removal and adherence to external lighting recommendations as set out in Bats & Lighting in the UK Bat Conservation Trust/Institution of Lighting Engineers, 2009.

- 9) Any excavations in excess of 300mm deep left open overnight shall either be securely covered or provided with an earth or timber ramp not less than 300mm wide and no steeper than 45 degrees to provide an escape route for animals.
- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of existing trees along the boundary of the site and the appropriate working methods in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of trees shall be carried out as approved.
- 11) No dwelling hereby permitted shall be occupied until space has been laid out within the site for car and bicycle parking in accordance with a scheme which has first been submitted to and approved in writing by the local planning authority. Those spaces shall thereafter be kept available at all times for those purposes.
- 12) No dwelling hereby permitted shall be occupied until a scheme for the management and maintenance of the proposed streets within the site has been submitted to and approved in writing by the local planning authority. Thereafter the streets shall be managed and maintained in accordance with the approved scheme.
- 13) No dwelling hereby permitted shall be occupied until refuse storage facilities have been implemented in accordance with details and a refuse storage strategy which have first been submitted to and approved in writing by the local planning authority. Thereafter the facilities shall be managed in accordance with the approved strategy.

*** End of Schedule of Conditions ***