



## Appeal Decision

Site visit made on 8 November 2018

**by D Guiver LLB (Hons) Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 December 2018**

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**Appeal Ref: APP/X1355/W/18/3205072**

**Land to the South of Byers Green House, Church Street, Byers Green, DL16 7NL**

- 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 Pillar Three Developments Limited against the decision of Durham County Council.
  - The application Ref DM/16/03445/OUT, dated 28 October 2016, was refused by notice dated 22 March 2017.
  - The development proposed is outline application for residential development of up to 25 dwellinghouses with all matters reserved.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The application is made in outline with all matters reserved. I have therefore considered the drawings submitted with the application showing potential layouts to be illustrative only. However, I note that during the application process the proposed maximum number of dwellings reduced from 25 to 22 and I have determined the appeal on that basis.
3. The appellant has provided planning obligations in the form of Unilateral Undertakings dated 15 June and 17 October 2018, together with an obligation in the form of an Agreement dated 31 October 2018 pursuant to Section 106 of the Town and Country Planning Act 1990, which would secure financial and affordable housing contributions. I will address this issue below.
4. Since the date of the Council's decision, the National Planning Policy Framework 2018 (the Framework) has been published and has effect. The parties have had the opportunity to make representations on the effect of the Framework on the application and I have taken all comments into consideration in this decision.

### Main Issues

5. I consider that the main issues are:
  - (a) the effect of the proposal on the character and appearance of the area with particular regard to the location in the countryside; and

- (b) whether the proposal would result in undue reliance on private motor transport.

## **Reasons**

### *Character and Appearance*

6. The appeal site comprises a roughly triangular plot of land south of the village of Byers Green, which is a small rural village 13 kilometres or so by road from Durham. The village sits comfortably in the surrounding countryside with relatively well spaced housing on the outskirts leading to a more densely developed centre. Notwithstanding the location of the village sign, the appeal site is some distance outside the developed footprint of the settlement and although there are some dwellings located adjacent to the plot, it is within the open countryside.
7. The village is not urban in character and the proposed development cannot be said to be located to an urban environment. The appeal site is a relatively large area of green space that makes an important contribution to the character and appearance of the countryside and forms part of the open expanse at the southern entrance to the village. The Council describes the area and a Landscape Conservation Area though it does not have any local or national protective designation.
8. The proposal is for the construction of 22 or so detached, semi-detached and terraced dwellings. While the scheme is in outline and the final scale, massing and design of the dwellings and any boundary treatments cannot be fully assessed, the proposed development would nevertheless introduce a significant and relatively densely packed built form into the otherwise open landscape that would have a detrimental effect on the character and appearance of the area. The proposal would also have an unacceptable impact on the existing setting and framing of the village, particularly when approached from the south.
9. Therefore, the proposed development would not be in accordance with Saved Policies H8 and H11 of the Sedgfield Borough Local Plan 1996 (the Local Plan) which seek to ensure that housing development occurs within the residential framework of Byers Green (defined to include the settlement boundary). It would also not accord with the relevant advice in Section 12 of the Framework, particularly the requirement in paragraph 127(c) requiring developments to be sympathetic to local character including the landscape setting.

### *Reliance of Private Motor Transport*

10. The village has a limited number of services and facilities including a primary school, pubs and churches but there do not appear to be any shops or medical facilities and few if any employment opportunities. Therefore, future occupiers of the site would be reliant on services in other settlements for most day-to-day needs.
11. The majority of the site frontage is subject to the national speed limit but is relatively straight with good visibility in both directions. There is a footpath on the opposite side of the road to the site that follows the road into the village. The northern corner of the site lies just within the village's 30mph zone. There is a bus route between the village and Spennymoor and with Durham, which are the nearest large settlements able to provide services, and there are bus stops are close to the southern corner of the site on either side of the road.

12. However, the bus service is relatively infrequent and would be inconvenient for future occupiers going to work, having to cope with weekly shopping or attending time-critical medical appointments. These circumstances would make reliance on public transport unappealing and I consider future occupiers would be much more likely to rely on private car journeys to access services which would result in an undue reliance on private motor vehicles.
13. Therefore, the proposal would not be in accordance with Policy D1 of the Local Plan, which seeks to ensure that developments provide satisfactory and safe provision for pedestrians, cyclists, public transport and cars and other vehicles, and the advice contained in Section 9 of the Framework promoting sustainable transport.

#### *Section 106 Planning Obligations*

14. Planning obligations should only be sought where they meet the tests in paragraph 56 of the Framework. The parties have entered into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (the Agreement) to provide a contribution to affordable housing as part of the proposed development. The Agreement provides for a minimum of ten percent of the dwellings to be affordable housing units, with the development limited to 22 dwellings. The final number of units to be provided is expressed as being subject to the Council's written approval of an Affordable Housing Statement identifying the affordable housing units on the site.
15. In addition, the appellant has given two unilateral undertakings pursuant to Section 106 (the Undertakings) that would provide a financial contribution to the Council for the provision of education, open space and improvement to ecology. The Undertakings are largely repetitive and provide for similar contributions, and it is assumed that the later supersedes the earlier.
16. The contributions would be directly related and fairly and reasonably related in scale and kind to the development. The financial contributions to be secured by the Undertakings would be required as a result of the development and therefore while they would be necessary to make the development acceptable in planning terms they do not offer any additional benefits.
17. The contribution to affordable housing would also be necessary to make the development acceptable but would provide a direct benefit by adding to the stock of affordable housing. However, the ten percent figure in a relatively small development would provide only two or three additional housing units, which is a relatively modest contribution

#### **Other Matters**

18. Interested parties raised a number of concerns reflecting those upon which the Council made its decision. In addition, objections were made about the impact of the development on ecology, traffic, school capacity, existing empty housing in the village and existing views from neighbouring properties. Interested parties also reflected the Council concerns about the impact on ecology and the potential for protected species being on the site. However, it was determined that any effect could be appropriately mitigated and adverse impacts properly compensated by the payment of a commuted sum secured by way of a planning obligation.

19. The proposal would doubtless lead to an increase in traffic but there is no compelling evidence to show that all additional traffic would drive through the village within a narrow window of time. The road to the village also travels south, which provides for access to Durham bypassing the village. Traffic to Spennymoor would also avoid the village. There would likely be some traffic through the village for example to the school but this would not be excessive. In terms of school places the Council states there is capacity for the anticipated increase in demand at both the village primary school and the catchment secondary school. Any additional capacity requirements would be funded by the financial contribution secured through the planning obligations.
20. I accept that there are likely to be vacant market housing units within the village but I am unaware of how these have been marketed. As with existing views from neighbouring properties the availability of other market housing in the area is not a specific planning issue and I therefore attach little weight to these arguments.
21. The decision notice refers to Policy ENV1 of the Local Plan but no such saved policy exists.

### **Planning Balance**

22. It is common ground that at the time of the decision the Council was unable to demonstrate a five-year supply of deliverable housing sites. The Council has presented a new draft County Durham Plan to cabinet to begin the consultation process towards adoption of a new local development plan. Assessed against the requirement in that draft and the Framework the Council states that it is now able to demonstrate a six-year supply of deliverable housing sites. However, this draft County Durham Plan is at an early stage with no certainty that it or its untested housing assessment would be adopted in its current form, and I therefore attach little weight to it.
23. The Council has referred to two recent appeal decisions where the use of the updated method of calculation in the Framework was considered. In the first decision<sup>1</sup> the Inspector did not find that the Council was able to demonstrate a five-year supply because of uncertainty about future requirements. In the second decision<sup>2</sup> the Inspector concluded that the Council was unable to demonstrate a five-year supply of deliverable housing sites for the purposes of paragraph 74 of the Framework because the stated housing supply had not been established in a recently adopted plan or in an annual position statement. The circumstances in these appeals remain the case and I attach significant weight to the Inspectors' decisions.
24. I therefore conclude that the Council is unable to demonstrate a five-year supply of deliverable housing sites and therefore the policies in the Local Plan which are most important for determining the application should be considered out of date. Accordingly, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
25. The main benefit of the proposal would be the relatively significant contribution to the housing supply, which would include a modest addition to the availability of affordable housing units.

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<sup>1</sup> APP/X1355/W/17/3180108

<sup>2</sup> APP/X1355/W/18/3197684

26. There would be some economic benefits that would accrue during construction and thereafter from the increased payment of Council Tax but these would be no more than would likely arise from a development in any other location. The contributions to public expenditure offered through planning obligations would only be necessary because of the proposal. The appellant also refers to potential for local spending to support shops, services and public transport, but there are few services in the village to support and the current public transport provision would be unlikely to attract any significant support from the development. I therefore attach little weight to these matters.
27. In the second appeal decision<sup>2</sup> I note that the Inspector was able to assess the housing supply using current verifiable figures and determined a housing land supply of 4.75 years. While this is sufficient to trigger the presumption in favour of sustainable development in paragraph 11(d) of the Framework, the shortfall is small and therefore I attach significant weight to the out of date policies.
28. Added to the contravention of the out of date policies, the potential for an increase in private vehicle journeys and the impact of the scheme of the character and appearance of the area would significantly and demonstrably outweigh any benefits of the proposal and therefore the scheme does not satisfy the presumption in favour of development.

### **Conclusion**

29. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*D Guiver*

INSPECTOR