



Appeal Decision

Inquiry held between 11 and 14 November 2014

Site visit made on 13 November 2014

by M Middleton BA (Econ) DipTP Dip Mgmt MRTPI

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

Decision date: 12 January 2015

Appeal Ref: APP/N1350/A/14/2217552

Land off Sadberge Road, Middleton St George, Darlington, County Durham, DL2 1JT

- 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 Gladman Developments Ltd against the decision of Darlington Borough Council.
 - The application Ref 13/00940/OUT, dated 18 November 2013, was refused by notice dated 4 March 2014.
 - The development proposed is residential development, up to 250 dwellings, landscape, open space, highway improvements and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for residential development, up to 250 dwellings, landscape, open space, highway improvements and associated works on land off Sadberge Road, Middleton St George, Darlington, County Durham, DL2 1JT in accordance with the terms of the application, Ref 13/00940/OUT, dated 18 November 2013, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural matters

2. The application is in outline with all matters apart from the access to Sadberge Road reserved for subsequent approval. It is accompanied by a Design and Access Statement and a Development Framework Plan (Drawing No. 5632-L-02-G, dated November 2013). This shows development details on a notional layout that includes four housing areas, separated by hedges/landscaped belts and areas of open space. It also outlines a road network that indicates a method of internal circulation and the proposed access to the site. It is agreed that the development would be carried out in general accordance with the details shown on this plan and the planning permission could be conditioned to that effect.
3. The configuration of the access to Sadberge Road is shown on a separate plan (Drawing No. 1356/10/A, dated February 2014). There are no objections to these details, which are agreed with the Council's Highway Engineers. This aspect of the development was not discussed at the Inquiry and apart from in the conditions, I do not refer to it any further in my decision.
4. The Appellant submitted a signed Agreement made under Section 106 of the Town and Country Planning Act 1990 between itself, the land owners and

Darlington Borough Council. In this document the Appellant and the land owners agree, if planning permission is granted, to make financial contributions towards the provision of improvements to local education facilities, off-site highway works, a pedestrian/cycle route and local sports pitches, as well as to offer to fund the purchase of a bus pass for the owner of each dwelling. They also agree to provide and manage public open space in accordance with details to be approved and to establish a management company to be responsible for the future maintenance of this open space.

5. I discuss the details of the matters proposed in the Agreement and their appropriateness, in the body of my decision letter. The Deed includes a clause that says that the covenants and obligations shall not apply or be enforceable, if I state in the decision letter that such obligations are incompatible with or otherwise fail to meet the relevant statutory tests. However, I am satisfied that the measures, as set out and commented on below, comply with the provisions of Paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms and meet Regulation 122 of the *Community Infrastructure Levy Regulations (CIL) 2010*.

Planning Policy

6. The Development Plan (DP) for the area now consists of the Darlington Local Development Framework Core Strategy (CS), which was adopted in May 2011 and the saved policies of the Darlington Local Plan (LP) 1997, which was adopted following alterations in 2001. The CS seeks to meet the Borough's housing and employment needs up to 2026.
7. The Locational Strategy, as set out in Policy CS1 and elsewhere, seeks to encourage growth in sustainable locations within the main urban area, on a sequential basis, in order to achieve a more sustainable community. The overall thrust of the development policies, in the context of housing provision, seeks to concentrate most new residential development within or on the edge of Darlington town, particularly in two strategic locations on the urban fringe.
8. Outside of the main urban area, development that supports the vitality and viability of villages is to be supported within the defined limits of development. Middleton St George is specifically referred to in this context. However the appeal site is outside of the development limits, as defined under LP Policy E2, and is technically within the open countryside. The proposal is not for any of the exceptions allowable in the open countryside under LP Policies H7 and H10 or for other identified rural needs allowed under Policy CS1. I therefore conclude that the proposal is contrary to Policy CS1 and LP Policies E2 and H7 and is not supported by LP Policy H10.
9. Nevertheless, in order to support vitality and viability, the CS at Policy CS1 does anticipate some development in larger villages such as Middleton St George. Under Policy CS10 it also envisages development adjacent to such settlements in circumstances where the development strategy is delivering 80% or less of the average proposed net additions to the existing stock. Darlington has not achieved 80% of its proposed net additions since the strategy was adopted in 2011 and the Council has already begun a process of releasing appropriate land at the urban fringe to boost supply.
10. Whilst the appeal site is outside of the defined development limits, as these were defined for the purpose of accommodating housing development up to

2006 and they have not been subsequently reviewed, they cannot be considered to be up to date in 2014. As they are not up to date, I consider Policy CS1 and LP Policies E2 and H7, in as much as they prevent development adjacent to the existing settlements, to be out of date.

11. However, as LP paragraph 3.11 explains, the Development Limits were also defined to protect the Borough's unspoilt countryside and to safeguard its character and appearance. Additionally LP paragraph 4.31 says that development outside of the development limits is strictly controlled in order to make the best use of existing infrastructure and community provision and to minimise essential travel requirements. The thrust of LP Policies E2 and H7 is consequently to protect the countryside from unnecessary development and to promote sustainable development, which is expressly recognised in the Framework at paragraph 17.
12. I therefore consider those aspects of the policies to be in conformity with the Framework and capable of attracting some weight. However, given the acceptance that greenfield land is required for future development, it is clearly inappropriate to rigidly apply LP Policies E2 and H7 to every part of the countryside, as previously defined. This particularly applies to land that is adjacent to the existing settlement limits. To refuse planning permission for all proposals within this area, just because they do not meet the criteria in these policies, is inappropriate. Nevertheless, even in a period when the housing supply policies are not up-to-date, the degree of harm to the countryside's character and appearance, the importance of affected views of and from the countryside and the impact of a particular proposal on its character, need to be assessed and weighed in the balance when considering the appropriateness of sites for development.
13. Paragraph 14 of the National Planning Policy Framework (Framework) says that where the relevant DP Policies are out of date, planning permission should be granted for sustainable development 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 or specific policies in the Framework indicate that development should be restricted. The DP Policies that regulate the supply and location of housing within the Borough of Darlington are time expired and/or out of date. Paragraph 14 of the Framework is consequently engaged in the context of this appeal.

Main Issues

14. Draft issues were circulated before the Inquiry and were discussed at its beginning. In the above context and from all that I have read, heard and seen I consider the main issues to be:
 - a) Whether Darlington now has a five year housing land supply;
 - b) Whether the proposal is sustainable development within the meaning of the National Planning Policy Framework and if so
 - c) Whether the benefits of the proposal are significantly and demonstrably outweighed by any harm to the character and appearance of the local countryside and any other harm attributable to the development such that the presumption in paragraph 14 of the Framework to favourably consider applications for sustainable development is outweighed.

Reasons

15. The site is a somewhat rectangular arable field. Its longer, southern boundary abuts the course of the former Stockton and Darlington Railway, which is now a local heritage trail and a part of the national cycle network. Beyond this lies the urban part of Middleton St George. Most of the area close to the appeal site was developed in recent decades and I was told at the Inquiry that much of the land, which the dwellings on these sites occupy, was previously developed land. To the north, the site is adjacent to the A67, which is a fast road linking Darlington with Stockton. To the west, beyond Sadberge Road, are allotment gardens and to the east the Whinneys, a local nature reserve.

Housing land supply

16. Housing land supply is made up of two components, the overall housing need and the supply of available land on which to meet that need at a specific point in time. The Framework, whilst encouraging Local Planning Authorities to boost significantly the supply of housing in paragraph 48, also says that their local plans should meet the fully objectively assessed needs (FOAN) for housing and affordable housing in the Housing Market Area (HMA). The National Planning Practice Guidance NPPG gives further advice on how a FOAN analysis should be undertaken. Darlington Borough is the major part of an HMA that probably extends into adjacent parts of North Yorkshire, as well as County Durham. Nevertheless, a high proportion of the population of this area live within the Borough so, for Darlington's purposes, it is reasonable to base any assessment of housing need on the population of the Borough.

17. The Housing requirement for Darlington in the CS is derived from the North East Regional Plan, which has now been revoked. That requirement included a significant element of planned population redistribution, in favour of the inner parts of the North East's conurbations, to support regeneration and the redevelopment of brown field sites. Darlington's medium and long term targets were consequently constrained. Regardless of the appropriateness of the housing targets in the CS at the time of their production, they were a top down imposed housing requirement and never an objective assessment of the needs of the area. They significantly fell short of the likely FOAN of the HMA at the time of their imposition and their context has totally changed following the repeal of the Regional Plan, the adoption of the Framework as National Planning Policy and the publication of its daughter document the National Planning Policy Guidance (NPPG). They are consequently not an appropriate basis for the housing requirement element of housing land supply in 2014, particularly as Darlington has no cooperative arrangements with the Teesside authorities, to promote the diversion of some of its growth to that area, as envisaged in the Regional Plan.

18. Unfortunately the Council did not make an assessment of the Borough's FOAN at the time that it prepared the CS and has not done so since. The Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer. Without an objective assessment of their housing requirements, as a starting point, they are unable to do this and demonstrate a five years supply of deliverable housing sites, regardless of the amount and quality of the data on the supply side. Paragraph 49 of the Framework is consequently once again engaged.

19. The Council commissioned a Strategic Housing Market Assessment in 2012 that suggested a corrected growth in households of 422 per annum. However, it now considers this to be optimistically too high because it was based on 2008 data, which is out of date. That analysis, however, only represents the first part of the three stage process to establish FOAN as outlined in the NPPG. It does not adjust the household projections to allow for economic growth rates or assess that result in the context of market signals. The CS seeks to facilitate sustainable economic growth by promoting a range and continuous supply of employment development opportunities. Furthermore, the indigenous working age population is forecasted to decline. In such circumstances, it is reasonable to expect there to be net inward migration and for the additional households that this would bring to Darlington, to require the provision of additional dwellings.
20. Such employment led inward migration clearly occurred at Darlington in the decade that preceded the onset of the recession in 2008. In such circumstances it is not unreasonable for the Appellant to suggest that there is likely to be a return to such trends in the future. The Council has a responsibility to plan properly for this, particularly when it is clearly promoting a growth agenda itself, as evidenced by its commitment to encourage growth in Policy CS1.
21. The Appellant has commissioned the preparation of a FOAN that follows the guidance in the NPPG. It finds that the FOAN for the period 2011-26 is 505 dwellings per annum (dpa). The Council were critical of this work, particularly the levels of inward migration and the calculation of the number of additional households that would result. In closing it suggested a reworked figure of 388 dpa, pointing out that this is extremely close to the Council's CS figure (350). I do not consider a figure that is more than 10% higher to be extremely close.
22. It is not a part of the function of a Section 78 appeal to establish the FOAN of a housing market area. That should be done through a thorough rigorous testing at a DP examination. Nevertheless, whilst I share some of the Council's concerns in the context of the levels of inward migration and headship rates contained in the Appellant's analysis, given the spectrum of supporting evidence that is before me I would be surprised if the FOAN was not significantly above 400 dpa when it is eventually established following appropriate testing.
23. As well as a rate of house-building based on FOAN, the Framework requires local planning authorities to add a buffer to the five years supply to ensure choice and competition in the market for land. It has also become established practice, now reinforced by guidance in the NPPG, to add any previous under-delivery during the plan period into the equation.
24. Before the onset of the recession in 2008, Darlington only once failed to meet its housing target in the previous 10 years. Overall there was a very healthy surplus of dwellings during this period. Although the CS housing targets have not been met since 2008 that is not untypical. The building industry has been in recession, largely because of the financial situation and the shortage of mortgages that resulted, as well as the prudence of some potential home owners in a period of financial austerity. In such circumstances and in the absence of any evidence to suggest that low completion rates have been a

product of housing land shortages, I am not persuaded that it is appropriate to apply a buffer greater than 5%.

25. In its assessment the Council has deferred the provision of the under-delivered dwellings to the latter part of the plan period. The NPPG suggests that any back-log should be added into the first five years where possible. This backlog has resulted from an under provision in the recent past for the reasons discussed above. That has not removed the need for the dwellings and once the market is functioning normally again, unless there are good reasons not to do so, they should be provided as soon as possible and not in five or ten years' time. The Framework specifically says at paragraph 47 that local planning authorities should boost significantly the supply of housing.
26. The only circumstances that I can foresee overriding this are where there is clear evidence of incapacity in the local building industry to achieve the amount of development required to meet the uplifted targets. In the period 2005-08, the house building industry in Darlington delivered more than 530 dpa. In Darlington's case it is agreed that the shortfall is only to be calculated over a three year period so it is not overly large. Unless the front loading of all of the previous under provision would result in this delivery rate being exceeded, then I can see no justification for not following the 'Sedgefield' method and seeking to make up for the shortfall within the first five years.
27. If the figure of 388 dpa, latterly advanced by the Council, is used as the basis for establishing need and allowing for a 5% buffer and the making up of the short-fall within the first five years, then there would be a requirement to supply in excess of 2,600 dwellings.
28. The Council originally put forward a supply of 1,942 dwellings, which was endorsed by the Darlington Strategic Housing Land Availability Steering Group (DSHLASG) in 2013 and agreed by the Appellant in the Statement of Common Ground. In its proof of evidence this figure was increased to 2,805. In discussion with the Appellant during the course of the Inquiry, this was reduced to 2,725. The Appellant's assessment suggests that there is only a potential supply of 2,006.
29. The Council's uplift includes additional dwellings from committed sites and a significant increase in the numbers provided from windfalls and other identified sites. A number of these relate to Council owned land where a resolution to dispose has now been obtained. The Appellant was very critical of the ability of some of the new sites to deliver the numbers of new dwellings forecasted by the Council, if any.
30. It is not the purpose of a Section 78 appeal to undertake a forensic site by site analysis of the Council's alleged housing land supply. Nevertheless, about 40% of the houses that are assumed to be delivered within five years do not have planning permission. These dwellings would be built at emerging sites, suitable, available and deliverable sites and windfalls. I accept that there is evidence that justifies the inclusion of additional windfalls in later years. Although some development may be achieved on emerging sites, if the Council takes a liberal view in granting planning permission in advance of the adoption of its Making and Growing Places DPD, their early development is by no means a certainty. Given the level of historic objections to some of them, legal challenges cannot be ruled out and significant infrastructure requirements will undoubtedly cause delays at some sites.

31. There was a distinct lack of credible hard evidence to justify the projections for some of these sites and consequently it would be unwise to place too much reliance on the potential for delivering a significant amount of the housing requirement from such sources. Matters such as environmental impact, contamination, protected species and traffic assessments have still to be determined at some of the sites, notwithstanding the need to relocate existing occupiers from more than one of the sites, including a cattle market. Over 20% of the identified dwellings are meant to come from the emerging sites. I am not persuaded that the evidence confirms that such optimism is justified.
32. The 2013 analysis was prepared in full consultation with the development industry. It appears to have been far less involved, if at all, with the more recent analysis. DSHLASG has not approved the revised figures and does not appear to have been formally consulted about the additional sites. The NPPG says that the advice of developers and local agents will be important in assessing lead-in-times and build-out rates by year. This further undermines the confidence that I can have in the findings.
33. Among other concerns, the Appellant specifically pointed out that there are potentially unstable gypsum deposits beneath Neasham Road. As a result, the proposed residential development at this site and the relocation of the cattle market to it seems unlikely in the short term. These two sites were meant to contribute 172 dwellings to the supply. Their exclusion alone would reduce the Council's supply total to about 2,550, which is appreciably less than a supply in excess of 2,600 that would be required if the Council's suggested annual need of 388 dpa were to be used as the basis for the housing need calculations.
34. I conclude that the Council has not demonstrated a five year supply of deliverable housing sites. Paragraph 49 of the Framework says that in such circumstances relevant policies for the supply of housing should not be considered up-to-date. The presumption in favour of sustainable development in paragraph 14 therefore applies.

Sustainable development

35. At paragraph 14 the Framework says that at its heart there is a presumption in favour of sustainable development. At paragraph 6 it points out that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means for the planning system. It further points out at paragraph 7 that there are three dimensions to sustainable development: economic, social and environmental. The three roles are mutually dependent and should not be taken in isolation (paragraph 8). The considerations that can contribute to sustainable development, within the meaning of the Framework, go far beyond the narrow meaning of locational sustainability. As portrayed, sustainable development is thus a multi-faceted, broad based concept. The factors involved are not always positive and it is often necessary to weigh relevant attributes against one another in order to arrive at a balanced position. The situation at the appeal site in this respect is no exception.

Economic role

36. Economic growth contributes to the building of a strong and competitive economy, which leads to prosperity. Development creates local jobs in the construction industry, as well as business for and jobs in the building supply

industry. These support sustainable economic development to deliver the homes, business and infrastructure that the country needs. This is particularly important in times of economic austerity and is emphasised in paragraphs 17 and 18 of the Framework. Whilst such jobs and business could be generated by development anywhere and in the context of Darlington there may well be locations that are more locationally sustainable than the appeal site that is not the issue. At the present time this Borough appears to be falling short of its requirements in terms of housing construction. In such circumstances, the availability of any site that could contribute to house building and economic development, in the short term, should attract some weight.

37. The appeal site is available. There is evidence that at least one well-established building company, with a track record of delivering new dwellings, is interested in acquiring the site to undertake a development in the short term. A condition could ensure that reserved matters are expedited without undue delay so that development could commence at an early date and thereby make a positive contribution to the need to boost the supply of housing now.
38. Shopping and community provision in Middleton St George is good for a settlement of its size, there being a number of shops, including a chemist as well as a variety of services that include a health centre and a dentist. Additional population, residing in the appeal development, would undoubtedly generate more expenditure to support these types of business, which in many rural communities are under threat.
39. There would be benefits to the local economy through increased expenditure in the form of wages and material purchases during the construction period. An unspecified number of jobs would be created for the duration of the development but not all of these would be based or recruited locally. Nevertheless, these economic benefits of the development, as discussed above, weigh in favour of the proposal in the sustainability balance and I find that the proposal would contribute positively to the economic dimension of sustainability. These considerations attract moderate weight in the overall sustainability balance.

Social Role

40. The proposal would contribute to the supply of housing at a time when there is an urgent need to increase the supply. Through a condition it would provide 20% of the dwellings as affordable housing, which is in accordance with Policy CS11. The Council through a proactive engagement with the Homes and Communities Agency appears to have been very successful in attracting funding from that source to meet some of the Borough's identified need. Nevertheless, the provision at the appeal site would contribute further to the meeting of this need and at a time when the means to create affordable housing on a large scale are limited. Despite the Borough's success, this undoubtedly weighs in favour of the proposal.
41. The Section 106 Agreement would provide funding to extend the local primary school, improve local sports pitch provision and secure the extension and improvement of a pedestrian cycle route between the appeal site and the centre of the village. Whilst these aspects of the proposal would primarily meet need generated by the new residents and are necessary to enable the development to be acceptable in planning terms, they would also improve

- facilities for the benefit of existing residents and in the circumstances they do attract some weight in the sustainability balance. They are all CIL compliant.
42. Middleton St George is a socially sustainable settlement. As well as the facilities referred to above there appears to be a thriving local community with numerous activities taking place throughout the week. There is a railway station with a half hourly service to Darlington and Teesside (hourly on Sundays) and a bus service with similar frequencies to Darlington. Both are within easy walking distance of the appeal site as are the village shops, services and facilities.
43. The Framework at Para 38 identifies primary schools and local shops as key facilities that should be located within walking distance of most residential properties. Both are within walking distance of much of this site, as are the other facilities. The Appellant also proposes, through a CIL compliant Section 106 contribution, to improve the pedestrian/cycle connection between the appeal site and the centre of the village as well as extensions to the school to increase its capacity. The residents of the appeal development would enjoy a social provision that is equal to, if not better than, that in many urban areas.
44. Housing provision at the appeal site would be socially sustainable. This consideration attracts moderate weight in the overall sustainability balance.

Environmental role

- a) Countryside
45. Whilst policy CS14 seeks to protect the distinctive character of the Borough's natural landscapes, in the context of the appeal site, its thrust, in the context of the appeal site, is to protect the separation and the openness of the strategic A66/A67 corridor between Darlington, Middleton St George and Stockton. The definition of this area on the Key Diagram is imprecise and the appeal site does not lie between the A66 and A67. If it were within the corridor then the policy concern would be the loss of openness and not a valued landscape.
46. However, Policy CS1 promotes development at the eastern urban fringe in a location that is clearly within the strategic corridor. This suggests that Policy CS14 is focussed on protecting the open character of the swathe of countryside between the two roads and away from existing built development. It could imply that necessary residential development, on the edge of the corridor and adjacent to existing built development, takes preference over the loss of openness in such locations. This reduces the weight that I should give to Policy CS14 in the circumstances of this appeal.
47. The Framework at paragraph 49 seeks to ensure that the need for housing does not take second place to other policy considerations. Nevertheless, that does not mean that those other considerations, including the protection of the countryside, should be disregarded altogether.
48. The importance of recognising the countryside's intrinsic character and beauty is one of the Framework's core principles, as set out at paragraph 17, and paragraph 109 seeks to ensure that valued landscapes are protected and enhanced. The protection of the environment, in its widest sense, is one of the three 'dimensions' of sustainability, as set out in paragraph 7. The LP at Policies E2 and H7 is broadly consistent with these aims.

49. The appeal site does not lie within any designated area of special landscape value. However, that does not mean that it has no value or that it is not valued by local people. Nothing in the Framework suggests that non designated countryside may not be valued or protected. Indeed many everyday landscapes are treasured by people and are as much a part of the identity of communities as are outstanding landscapes. It therefore seems to me that the countryside protection policies should be weighed in the sustainability balance against other relevant considerations. Having said that, all landscapes are likely to be valued by someone and there is no dispute that some areas of countryside will have to be lost to development if the Borough's development needs are to be met.
50. The effect of the proposal on the character and appearance of the countryside and the setting of the village was central to the refusal of planning permission. The Council thought that the development of the appeal site would be detrimental in terms of the loss of open views across the rural landscape, particularly from the route of the former Stockton to Darlington railway, which is now a well-used footpath/cycleway. The resultant changes to the character and appearance of the countryside and the Appellants' mitigation proposals were discussed at length during the Inquiry.
51. Middleton St George is located within the Tees Lowlands landscape character area. This is characterised as a broad low-lying and open plain of predominantly arable agricultural land. When combined with the low woodland cover and large fields, this creates an open landscape with long views in all directions to distant skylines.
52. However, the appeal site is surrounded by unmaintained hedges that contain an abundance of native trees and shrubs, some of them evergreen. In consequence views into and out of the site are limited and in that respect this arable field is not typical of the wider landscape of which it is a part. Additionally it is located between the built up area of Middleton St George and the A67, a heavily trafficked main road and consequently detached from the wider countryside landscape.
53. The LP text at paragraph 3.11 refers to the countryside's well defined boundaries. Although the recreational route is an obvious boundary between the built-up and rural areas, the somewhat alien A67, with its hard surfacing, street lights and constant flow of vehicles, probably better fits the terminology of 'well-defined'.
54. The part of this character area, immediately adjacent to the appeal site, is more undulating than the landform in the wider area so that extensive views are only readily available from the high points. Hedges, adjacent to public thoroughfares have a restraining influence on the views from many viewpoints. Consequently, in the vicinity of the appeal site, it is only clearly seen from one point along a footpath to the north-east of Highfield, which does not appear to be well used. However, even from here, the vegetation either side of the A67 has a screening effect and the buildings on higher land in Middleton St George are more in evidence than the appeal site itself.
55. From further afield the appeal site and the existing village appear even less obvious. Were additional landscaping to take place within the appeal site, then following its establishment, there is no reason why views of the built development on the appeal site and the wider settlement could not have less of

- an impact on the wider countryside than the existing buildings have now. In such circumstances, in the context of the wider landscape, the appeal proposal, although by definition adverse, would only have a very minor impact.
56. The majority of the receptors on the A67 are in vehicles and travelling at speed. As a result, the appeal site only has a momentary impact on their experience. Whilst pedestrians no doubt use the footpath on its southern side, there is no evidence to suggest that it is well used. However, even from here, there are only glimpses of the appeal site and the existing development within Middleton St George is clearly in evidence beyond it when they do occur. These are not fundamentally views of the countryside but of an urban area across a field. Guidance in the Framework says that where necessary, appropriate mitigation and enhancement should be secured by conditions. The strengthening of the existing roadside planting within the adjacent parts of the appeal site could mitigate most of the additional harm to the A67 experience that would result from the appeal site's development. This could be secured through the landscaping condition.
57. The route of the former Stockton to Darlington railway is in a shallow cutting for most of its length adjacent to the appeal site. Its northern boundary consists of a somewhat outgrown hedge that contains a succession of trees and evergreen shrubs as well as ivy. Consequently, for much of its length, even in winter, the appeal site is not easily visible from the footpath. There are nevertheless occasional views into the site but where they exist the views are of an arable field, bounded on its northern side by a mature belt of planting (adjacent to the A67). Views of the wider countryside are very limited from these vantage points.
58. The existing planting could be strengthened by additional vegetation, and there could be further planting within the appeal site to improve the screening. The use of native evergreens within the species mix would assist this in winter. Nevertheless, I was told that there is a utility easement immediately to the north of the boundary where planting would not be possible. In such circumstances and in order to create adequate screening, it may be necessary to have a wider buffer, between the appeal site's southern boundary and the dwellings, than the notional layout plan suggests. Similar care and attention would also need to be given to the extent of the landscaped buffer on the northern side of the site and the relationship between the dwellings and the A67, if a near neutral impact on the visual experience for travellers along that road is to be achieved. These considerations could have a bearing on the overall capacity to accommodate dwellings and the actual number may not be as high as 250.
59. Although additional landscaping, if correctly designed and satisfactorily implemented, could screen much of the housing from the footpath/cycleway, there would be unavoidable views into the appeal site at the two locations where pedestrian links are suggested. No amount of planting could totally obscure the development at these points and there would be an adverse visual impact on the footpath/cycleway at these locations and also at the site's vehicular entrance along Sadberge Road.
60. However, at the present time the rural aspect of the heritage trail, adjacent to the appeal site, is compromised by the repeated appearance of dwellings and their paraphernalia immediately to its south. In places there appears to have

been little attempt to screen this development from users of the former track bed. There is land on the southern side of the hard surface, which is owned by the Council and upon which additional planting that would filter some of the unsightly views of the existing development, could be introduced. The Appellant has agreed to a condition that would secure this. In my view this mitigation would do much to compensate for the impact of the development of the appeal site on the visual experience of users of the footpath/cycleway and Sadberge Road. Consequently, the overall impact on it need not be any more than minor adverse.

61. The appeal site is clearly visible from a secondary path within the Whinnies nature reserve that is close to its western boundary. However, there are again obvious views of the residential development within the existing village above the former railway line so that this is not a rural experience. If landscaping akin to that illustrated on the notional layout is successfully implemented on this part of the site, then there is no reason why the potential adverse impact on views out of the western side of the Whinnies could not be successfully mitigated. Given time, the planting would not only screen the proposed development but also much of the existing development within Middleton St George that is clearly visible beyond the footpath/cycleway at the present time. In the long term this could be a positive benefit.
62. There are no important views of the surrounding countryside that this development would obliterate or important views of the urban edge of Middleton St George that would be removed, indeed the proposal presents an opportunity to improve the character of this edge to the village when seen from the footpath/cycleway and the A67/wider countryside to its north.
63. With the improvements to the site's landscaping discussed above, this development could create an appropriate edge to the built development in this part of Middleton St George, improving its setting. The development would not adversely impact upon the more distant views from the public footpaths and at the same time it could enhance the landscape character of this edge to the village's built up area, including some of the existing development. Although there would be a reduction in openness, for the reasons discussed in paragraph 46 above, the harm to Policy CS14 would not be significant and the proposal need not cause any more than minor long term harm to the character and appearance of the local countryside. In these circumstances the weight that I should attach to saved LP Policies E2 and H7 must be significantly reduced.

b) Accessibility

64. A development of up to 149 new homes would generate significant movement. Nevertheless, the provision of facilities and public transport in Middleton St George are good, even by comparison to some of the more urban parts of the Borough. In consequence, the purchase of bus passes, which is also a part of the Section 106 Agreement, and is CIL compliant, is likely to be successful in persuading a disproportionate number of the appeal site's residents to use a sustainable means of movement for many journeys.
65. Nevertheless, employment and facilities in Middleton St George are not sufficient to sustain the local population. Consequently, most residents of the appeal site would travel elsewhere for work, as well as for comparison shopping and they would also be likely to visit larger supermarkets elsewhere for many of their convenience purchases. However, the appeal site is close to large

developing employment areas on the south-eastern fringe of Darlington. In fact it is closer to this area than are many parts of the town. There is also quick and convenient access to this area as well as to Darlington Town Centre by public transport.

66. Paragraph 34 of the Framework says that decisions should ensure that developments that generate significant movement are located where the need to travel can be minimised and the use of sustainable transport modes can be maximised. The appeal proposal, although not within the Darlington urban area, would nevertheless meet this requirement. Overall I find that the site's locational advantages have moderate sustainability benefits.

c) Other environmental considerations

67. On balance there would be net gains to ecology, on a site that currently has little in the way of flora and fauna, through the use of some of the amenity open space by wildlife. Other positive measures that the Appellant could implement, as a part of the development and which could be ensured through conditions, could also provide ecological benefits. These weigh in favour of the proposal.
68. There is no dispute that through the discharge of appropriate conditions, the development could create a high quality built environment that would make efficient use of land and could reflect the distinctive characteristics of the area. The detailed design and layout could be pursued, in accordance with these conditions, resulting in a development that was of a high quality, safe, sustainable and inclusive in accordance with the requirements of Policy CS2.
69. Overall I conclude that the harm to the countryside landscape could be reduced by mitigation but not totally offset by this and the benefits to environmental sustainability provided by the ecological and off-site landscape and footpath improvements as well as the accessibility advantages of the location. Nevertheless the overall long term environmental harm is only small. This consideration attracts only minor weight in the overall sustainability balance.

Sustainability conclusion

70. The Council point out that the NPPF does not indicate that any one element should represent a trump card. I agree with it in the context of not giving supplementary weight to the economic benefits of a proposal such that they outweigh the harm, regardless of the weight that the negative considerations attract. However, equally, that does not mean that a proposal has to pass all three of the sustainability tests to be acceptable and that any of the three roles can act as a trump card against any development. The Framework is clear, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. It is rare for any development to have no adverse impacts and on balance many fail one of the roles. For the Framework's sustainability test to have meaning then, all of the competing considerations have to be assessed together and an overall balanced conclusion reached.
71. I have found that the proposal would make a positive contribution to the economic aspects of sustainable development through its contribution to economic development and regeneration. I have also found that it would contribute positively to housing supply and other aspects of social

sustainability. These along with the locational sustainability of the site, together, weigh significantly in favour of the proposal. The proposal would undoubtedly have a negative impact on the environment but with the implementation of mitigation measures, this could be reduced to minor harm. It is therefore my judgement that the economic and social benefits would significantly and demonstrably outweigh the environmental harm so that the appeal proposal would deliver sustainable development within the meaning of paragraphs 18-49 of the Framework. Consequently the provisions of Para 14 apply.

Planning balance and overall conclusions

72. This is an outline application and I only need to be satisfied that the development could be satisfactorily accommodated on the site and without adversely affecting the character and appearance and openness of the countryside to an extent that when weighed in the balance against all of the other positive and negative attributes of the scheme, did not tip the scales against the proposal.
73. I have found that on balance the proposal is sustainable development within the overall meaning of paragraphs 18 to 219 of the Framework. Nevertheless despite the proposed mitigation there would still be some harm to the character and appearance of the countryside and there would be a reduction in its openness within the A66/A67 corridor. The proposal is clearly contrary to the countryside protection elements of LP Policies E2 and H7 as well as being contrary to CS14. However, if Darlington's overall housing needs are to be met then it will be necessary to develop greenfields on the edge of the countryside somewhere.
74. In addition to having housing policies that are now out of date, Darlington cannot demonstrate that it has a five year supply of housing land and the Framework urges every effort to boost the supply of housing. Despite the Council's recent efforts to boost the supply of housing land, the evidence suggests that there is not a five year supply. Policy CS10 says that where the strategy is delivering 80% or less of the average net additions to existing stock required, windfall housing in appropriate locations at the urban fringe and then within or adjacent to the larger villages may be permitted, provided that early delivery of such development is secured by planning conditions.
75. Whilst I understand the Council's desire to maintain a sequential approach to the distribution of new housing sites, the fact remains that there is no site allocations plan and in its absence the market, despite the Council's laudable efforts to dispose of land for residential development, has been unable to bring sufficient land forward to meet the need within or on the edge of the urban area. The strategy has delivered little more than 50% of the target during the last three years and there is no evidence to suggest that the shortfall could be delivered on the urban fringe or within the defined limits of one of the larger villages in the short term. Middleton St George is a larger village and the appeal site is on its edge. As discussed above the site is sustainable, in some respects more so than some sites on the edge of the urban area. The proposal is therefore supported by Policy CS10. These considerations should attract significant weight in favour of the appeal proposal.
76. Any potential harm to the character and appearance of the local countryside could be reduced by conditions requiring the improvement of the boundary

screening along the edges of the site, and other landscaping within the parts of the site to be developed. Consequently any harm to the countryside aspects of saved LP Policies E2 and H6 and Policy CS14 would not be significant and is outweighed by the proposal's clear benefits. Any potential harm to education and highways within Middleton St George could be overcome by the contributions that would be delivered through the Section 106 Agreement or by planning conditions.

77. I do not consider the disadvantages of the scheme, including its conflict with the Development Plan, carry sufficient weight to significantly and demonstrably outweigh the presumption in favour of sustainable development set out in the Framework, when considered alongside the benefits provided for the supply of affordable and market housing in Darlington at an early date and the other material considerations in favour of the proposal discussed above. I therefore find for the reasons discussed above and having taken account of all of the other matters raised, including the representations that local residents put to me both at the Inquiry and in writing beforehand that the appeal should be allowed subject to conditions.

Other decisions

78. I was referred to a number of recent appeals that dealt with similar situations where there was not an up-to-date DP or a five-years supply of housing land. I have not referred to any of these in my decision as it is rarely the case that other appeal decisions are so similar as to significantly influence the outcome of an appeal. In my view that situation does not apply to this appeal. I have determined it on the merits of the evidence put before me by all of the parties and have given minimal weight to the overall outcome of the other appeals referred to me.
79. I was also referred to a number of high Court decisions, which I have had regard to in formulating my decision. However, apart from the matters of law that some of them resolved and which I have followed, the respective cases were not so similar to the appeal proposal to further influence the outcome of this appeal.

Conditions

80. The Council's seventeen suggested conditions were considered in the context of the Framework and the advice in the NPPG. All of the conditions are agreed by the parties. They include the time limits for commencement, phasing and the submission and approval of details that are routinely applied to outline planning permissions.
81. To enable the developments to meet Development Plan policies that seek to achieve sustainable development and protect the living conditions of the developments' and nearby residents, conditions concerning, landscaping, biodiversity protection and enhancement, interpretation, sustainable construction and drainage, archaeology, affordable housing, a green travel plan, contamination, construction management and the implementation of the vehicular access, parking and off-site pedestrian improvements have been suggested and agreed.
82. I have considered the need for these conditions in the context of the six tests contained in paragraph 206 of the Framework and the advice contained in the

NPPG. As one of the reasons for allowing this appeal concerns the site's alleged ability to significantly contribute to housing provision within the next five years, it is appropriate to reduce the time limits for the submission of details and the commencement of development from the norm. As discussed above I also consider a condition requiring the Appellant to prepare and implement a scheme of environmental mitigation along the southern side of the heritage footpath to be appropriate.

83. These conditions are necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable and minimises the impact on the environment.

M Middleton

INSPECTOR

Richborough Estates

Schedule of Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than eighteen months from the date of this permission.
- 2) The development hereby permitted shall be begun either before the expiration of;
 - (a) three years from the date of this permission, or
 - (b) one year from the date of approval of the last of the reserved matters to be approved;whichever is the later.
- 3) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") of the development shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 4) The development hereby permitted shall comprise no more than 250 dwellings.
- 5) The development hereby permitted shall be carried out in general accordance with the details shown on the submitted Development Framework Plan, drawing number 5632-L02_G – November 2013.
- 6) Prior to commencement of development a scheme outlining the phasing of development, including a site layout plan identifying land uses such as formal and informal open space and infrastructure, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out only in accordance with the approved phasing scheme.
- 7) The reserved matters application for landscaping shall be accompanied by a detailed Landscape Master-plan, Implementation Strategy and Management Plan, demonstrating that the landscaping proposals have taken account of and been informed by the existing landscape characteristics of the site and by any loss of existing vegetation on the site.
- 8) No development shall commence until a scheme outlining landscape planting and establishment along both sides of the track bed immediately to the south of the site and on land controlled by Darlington Borough Council, has been submitted to and approved in writing by the local planning authority. No more than 50 dwellings hereby permitted shall be occupied unless and until the approved scheme has been implemented.
- 9) Access to the development shall be implemented only in accordance with the submitted 'Revised' Access Plans – 1356/10/A – February 2014.
- 10) No dwelling in the development hereby approved shall be occupied until a scheme, that is in general accordance with the Pedestrian Improvement Strategy Plan – 1356/09 – October 2013, showing details of the improvements to the existing crossing points along Station Road to provide suitable linkage to the existing bus stop, is submitted to and approved in writing by the local planning authority.

- 11) No dwelling in the development hereby approved shall be occupied until a travel plan based on the Framework Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include objectives, targets, mechanisms and measures to achieve its envisaged results, implementation timescales and provision for monitoring as well as arrangements for a Travel Plan co-ordinator, who shall be in place until 5 years after the completion of the final phase of development. The approved plan shall be audited and updated and submitted for the approval of the local planning authority at intervals of no longer than 18 months. The measures contained within the approved plan and any approved modifications shall be carried out in full.
- 12) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - a) the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 20% of housing units;
 - b) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - c) the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing] (if no RSL involved);
 - d) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - e) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 13) No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
 - a) a timetable for its implementation; and
 - b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- a) the hours of work;
 - b) the parking of the vehicles of site operatives and visitors;
 - c) the loading and unloading of plant and materials;
 - d) the storage of plant and materials used in constructing the development;
 - e) the erection and maintenance of security hoarding and fencing, including decorative displays and facilities for public viewing, where appropriate;
 - f) wheel washing facilities;
 - g) measures to control the emission of dust and dirt during construction;
 - h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - i) vehicle routes, road maintenance and signage.
- 15) No part of the development hereby permitted shall be commenced on site unless and until:
- a) a site investigation has been designed for the site using the information obtained from the desktop investigation previously submitted in respect of contamination. This shall be submitted to and approved in writing by the local planning authority prior to the investigation being carried out on the site; and
 - b) the site investigation and associated risk assessment have been undertaken in accordance with details submitted to and approved in writing by the local planning authority; and
 - c) a method statement and remediation strategy, based on the information obtained from 'b' above, including a programme of works, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved remediation strategy.
- 16) No development shall take place within the application site until a written scheme of archaeological investigation, including the methodology of further investigation works and a programme for the works to be undertaken, has been submitted to and approved in writing by the local planning authority. Thereafter the scheme shall be implemented in accordance with the agreed methodology and programme.

- 17) Before any development commences, detailed proposals for the incorporation of features into the scheme that are suitable for use by breeding birds (including swifts and house sparrows) and roosting bats, including a timetable for implementation, shall be submitted to and approved in writing by the local planning authority. The proposals shall be installed in accordance with the approved details and timetable and retained thereafter.
- 18) Before any development or other operations commence, and within one month of the planned commencement of works, an assessment of the trees on the site for bat roosts shall be undertaken by a licensed bat ecologist. A copy of the assessment report shall be submitted to the local planning authority and any necessary mitigation plan shall be agreed, implemented and if necessary maintained in consultation with Natural England and confirmed in writing by the local planning authority.
- 19) No tree/shrub clearance works shall be carried out on the site between 1st March and 31st August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the local planning authority. If such a scheme is submitted and approved, the development shall thereafter only be carried out in accordance with the approved scheme.
- 20) No development shall take place until details of a series of interpretation boards to be installed along the Stockton to Darlington 'heritage trail', in close proximity to the site, have been submitted to and approved in writing by the local planning authority. The interpretation boards shall be installed in accordance with the approved details prior to first occupation.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Easton of Counsel	Appointed by Darlington Borough Council
He called	
Amanda Neil BA, MA CMLI	Arup
Valerie Adams BSc, DipTP, MRTPI	Darlington Borough Council
Adrian Holes DipTP,	Darlington Borough Council

FOR THE APPELLANT:

Giles Cannock of Counsel	Appointed by Gladman Developments Ltd
He called	
Keith Nye BA, BArch, DipLA, CMLI	FPCR
Daren Wisher BA, MA	Regeneris Consulting
Mark Johnson MRICS, MRTPI	Johnson Brook

INTERESTED PERSONS:

Doris Jones	Middleton St George Parish Council
Alastair Mackenzie	Sadberge Parish Council

DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Statement and supporting information from Doris Jones
- 2 Statement from Alastair Mackenzie on behalf of Sadberge Parish Council
- 3 Letter from John Wheeler, a local resident
- 4 Letter from Angela Montgomery, a local resident
- 5 Extracts from Guidelines for Landscape and Visual Impact Assessment, Landscape Institute 2013, submitted by the Appellant
- 6 Public consultation document, Making and Growing Places Preferred Options Development Plan Document, May 2014, submitted by the Council
- 7 Darlington Local Plan, Housing Technical Paper 1: New Housing, June 2013, submitted by the Council
- 8 Supplementary Note: Assessment of Housing Need in Darlington, submitted by the Appellant
- 9 Housing and economic land availability assessment, Planning Practice Guidance, submitted by the Appellant
- 10 Commuting flows between Darlington and neighbouring authorities, 2001 and 2008, submitted by the Council
- 11 Commuting flows between Darlington and neighbouring authorities, 2011 submitted by the Council
- 12 Comparison of Darlington's 5 year land supply position against various housing requirement and land supply calculation scenarios, submitted by the Council
- 13 Revised Darlington 5 year land supply position, submitted by the Appellant
- 14 Actual and forecasted completions on sites with planning permission 2013-29, submitted by the Council
- 15 5 year land supply update and summary, submitted by the Council
- 16 Housing land supply update: site considerations, submitted by the Council
- 17 Updates on planning and marketing at Woodburn Nursery and Humbleton Farm development sites, submitted by the Council

- 18 Email correspondence between Neil Milburn of Barratt Homes and James Holladay of Gladman Developments, concerning the former's interest in purchasing and developing the appeal site and gypsum problems at the Neasham Road site, submitted by the Appellant
- 19 Examination of the Cheshire East Local Plan Strategy: Inspector's interim views on the legal compliance and soundness of the submitted Local Plan Strategy, submitted by the Appellant
- 20 Appeal ref: APP/R0660/A/13/2209327, Ivanhoe, Holmes Chapel Road, Brereton, Congleton, CW12 4SP, submitted by the Appellant
- 21 Appeal ref: APP/M2325/A/13/2200856, Land south of Moss Side Lane, Ribby with Wrea, submitted by the Council
- 22 Appeal ref: APP/K2420/A/13/2202261, Land east of Wolvey Road, Three Pots, Burbage, Leicestershire, LE10 2JJ, submitted by the Council
- 23 Appeal ref: APP/P1045/A/13/2195508, Land off Thatchers Croft, Tansley, Matlock, submitted by the Council
- 24 Appeal ref: APP/Z2830/A/12/2188768, Land of Stockwell Way, Milton Malsor, Northampton, NN7 3AL, submitted by the Council
- 25 Appeal ref: APP/Y2736/A/12/2170715, Land to the east of Outgang Lane, Pickering, YO18 7HZ, submitted by the Council
- 26 Draft list of planning conditions, submitted by the Appellant
- 27 Revised draft list of planning conditions, submitted by the Appellant
- 28 Community Infrastructure Levy Compliance Statement, submitted by the Appellant
- 29 Community Infrastructure Levy Compliance: Council's position with respect to off-site leisure provision, submitted by the Council
- 30 Community Infrastructure Levy Compliance: Council's position with respect to education, submitted by the Council
- 31 Signed Section 106 Agreement, submitted by the Appellant

PLANS

- A Darlington Core Strategy, Key Diagram submitted by the Council
- B Plan showing land owned by Darlington Borough Council in the vicinity of the appeal site, submitted by the Council