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## Appeal Decision

Site visit made on 11 December 2014

**by M Seaton BSc (Hons) DipTP MRTPI**

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

**Decision date: 19 January 2015**

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**Appeal Ref: APP/H0738/A/14/2226575**

**Land off Busby Way, Mount Leven, Yarm, Stockton-on-Tees**

- 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 Moore & McCluskey against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 14/0807/OUT, dated 28 February 2014, was refused by notice dated 15 September 2014.
  - The development proposed is a residential development of 14 No. units.
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### Decision

1. The appeal is allowed and outline planning permission is granted for a residential development of 14 No. units at Land off Busby Way, Mount Leven, Yarm, Stockton-on-Tees in accordance with the terms of the application, Ref 14/0807/OUT, dated 28 February 2014, subject to the conditions set out in the Annex.

### Application for costs

2. An application for costs was made by Moore & McCluskey against Stockton-on-Tees Borough Council. This application will be the subject of a separate Decision.

### Procedural Matters

3. The application has been submitted in outline with only access to be considered at this stage. As a consequence matters of layout, appearance, landscaping and scale are reserved for later approval. I have dealt with the appeal on this basis, treating the plans submitted as indicative of the type of development that could be carried out.
4. It has been drawn to my attention that during the course of the planning application an amendment to the ownership details of the access to the land was made. Furthermore, since receipt of the appeal, the appellant has submitted an amended copy of a signed Unilateral Undertaking under s106 of the Town and Country Planning Act 1990 as amended (the 1990 Act) in respect of financial contributions towards additional local infrastructure, services and amenities. I have determined the appeal on the basis of these further submissions, and will return to matters related to the Unilateral Undertaking below.

## **Main Issues**

5. The main issues are;

- The effect of the proposed development on the character and appearance of the area; and,
- Whether the proposed development would safeguard the living conditions of the occupiers of Busby Way and Battersby Close, having regard to noise and disturbance, light pollution, and emissions from vehicular and pedestrian movements and the day to day occupation of the proposed dwellings.

## **Reasons**

6. The Council has highlighted that the proposed development would be contrary to Policy CS7 of the Stockton-on-Tees Core Strategy Development Plan Document 2010 (the Core Strategy). This policy addresses housing distribution and phasing of development within Stockton-on-Tees administrative area, with the Council indicating that the development of this previously undeveloped site would be contrary to the phasing requirements of the policy in respect of the release and allocation of additional land for development. However, by its own admission the Council is unable to demonstrate a five year supply of deliverable housing sites, identifying only a demonstrable 4.08 year supply. In this respect, I would agree with the Council's conclusion that the housing based policies within the development plan would as a consequence be judged to be out of date. Whilst I have had regard to the Council's reference to the emerging policies of the Stockton on Tees Core Strategy Regeneration and Environment LDD, its limited progress towards adoption would attract only very limited weight. Nevertheless, the principle of housing development must be assessed against the principles of sustainable development as set out at paragraph 14 of the National Planning Policy Framework.

### *Character and appearance*

7. The appeal site comprises an area of paddock immediately adjacent to the rear garden boundaries of a number of existing dwellings located within the wider developed area of Yarm. Other than an existing stable block, the land does not accommodate any development, and is bounded by a mix of hedges and fences.
8. The Council has indicated that the development for housing would be contrary to one of the 12 objectives of the Core Strategy, as well as Policy CS10(3), which seek to avoid the coalescence of built up areas through the protection of existing green wedges and strategic gaps. The appeal site is located within the green wedge of the Leven Valley, which occupies a position between Yarm and Ingleby Barwick. However, whilst the proposed development would therefore appear not to accord with this policy, my attention has been drawn by the parties to an extant planning permission for a development of 350 properties and a 100 bed care home (the Mount Leven scheme) which would wrap around the appeal site to the north, east and south. I consider this to be an important material planning consideration with respect to the acceptability of the appeal proposals.
9. On the basis of the evidence before me, the proposed development would occupy a position between the main northern and southern elements of the Mount Leven scheme. In this respect, I would agree with the contention of the

Council and interested parties that the proposals would be visible across the valley from Ingleby Barwick. However, whilst the proposal would result in the development of existing open land, it would be of a relatively low density, and would ultimately be viewed in the context of the backdrop of the existing wider residential development of Yarm, as well as the Mount Leven scheme. Additionally, there would also be the opportunity to further limit any visual impact at the point of consideration of the landscaping as part of the submission of reserved matters. In respect of the green wedge, I am satisfied that a significant proportion would remain between Yarm and Ingleby Barwick, and that in the context of the approved Mount Leven scheme, the proposed development would not unacceptably undermine the objective of avoiding the coalescence of the two settlements.

10. I have also considered the impact of the proposed development on the character and appearance of the area, as experienced from the rear of the existing dwellings on Battersby Close and Busby Way. In this respect, I agree with the Council and interested parties that there would be an undoubted change from the open character and appearance currently afforded by the appeal site and wider open land beyond. However, such a change does not necessarily support there to be a resultant harmful impact on the character and appearance of the area. On the basis of the evidence which has been submitted, the outline nature of the application with layout identified as a reserved matter, and my own observations on the site, I am not persuaded that any resultant impact on the existing character and appearance of the area from the development of this site would be sufficiently harmful to justify a refusal of permission.
11. The Council has highlighted its concerns in respect of the proposed development were the approved Mount Leven scheme not to be implemented. As a consequence, the Council have sought to ensure that a control is placed within the submitted Section 106 legal agreement to prevent the commencement of the appeal development until such time as the Mount Leven scheme has been commenced. In light of my conclusions on the relationship between the approved Mount Leven scheme and the appeal proposals, I accept that this covenant would be necessary to make the development acceptable in planning terms, and would meet the tests for planning obligations as set out in paragraph 204 of the Framework. I have noted that the appellant has submitted an amended Unilateral Undertaking during the course of this appeal which includes such a covenant, and that the Council now finds the submitted Unilateral Undertaking to be acceptable in this respect.
12. I have noted the concerns which have been raised by interested parties regarding the potential for an adverse impact on the Tees Heritage Park. However, I have noted the location of the appeal site in the context of the position of the core area of the Heritage Park, and agree with the assessment of the Council Officer to the Planning Committee, that the combination of the limited size of the appeal site and its location relative to the Mount Leven scheme, would not result in an unacceptable impact on the Heritage Park.
13. I agree with the Council's conclusion that the proposed addition of a further 13 residential units would make only a limited contribution towards the deficiency of deliverable housing sites land supply, although I accept that this would weigh further in support of the proposals as would its sustainable location on the edge of the existing settlement. Nevertheless, on the basis of the

submitted evidence, I am satisfied that subject to the signed Unilateral Undertaking, the proposed development would not have an unacceptable harmful effect on the character and appearance of the area. The proposals would therefore accord with Policy CS10(3) of the Core Strategy, which seeks to ensure that the separation and openness between settlements provided by green wedges would be retained.

### *Living conditions*

14. On the basis of the Council's reason for refusal, the principal concerns in respect of the impact on living conditions would appear to relate to the potential for noise and disturbance, light pollution, and the effects of emissions experienced by neighbouring occupiers. These are explained to be principally as a result of the additional comings and goings of vehicles and pedestrians connected with the site, and the day to day occupation of the proposed dwellings.
15. In considering the impact on neighbouring occupiers having regard to noise and disturbance, I have been particularly mindful of the similarities in the nature of the existing noise sources in the locality. In this respect, whilst I accept that the proposed development would result in additional vehicular and pedestrian comings and goings from the appeal site in comparison with the existing movements, it is unlikely that these would result in an adverse or unacceptable effect on the amenities of the neighbouring residential area, with the nature of such movements blending in with the existing noise environment. Similarly, and accepting the current undeveloped status of the appeal site, given the prevailing residential character of the surrounding area, I am not persuaded that the occupation of the additional residential properties would result in an adverse impact on the living conditions of existing residents of Busby Way and Battersby Close.
16. In seeking to assess the impact of light pollution and emissions, I am mindful that the Council has not provided any detailed explanation within its appeal statement regarding the likely source or quantum of harm which would arise in this respect. On the assumption that the impacts would also be as a result of the movement of vehicles, in the absence of any detailed evidence supporting this contention I cannot conclude that the likely quantum of additional traffic would result in such an adverse impact. If however the reference related to the day to day occupation of the proposed dwellings, this would be a matter which would be addressed at the reserved matters stage, although I am satisfied that the form and design of development could be sufficiently controlled to ensure that there would not be an adverse effect on living conditions in this respect.
17. The proposed development would safeguard the living conditions of the occupiers of Busby Way and Battersby Close, having regard to noise and disturbance, light pollution, and emissions from vehicular and pedestrian movements, and the day to day occupation of the proposed dwellings. There would not be conflict with saved Policy HO3 of the Stockton-on-Tees Local Plan 1997, which seeks to ensure that development does not result in an unacceptable loss of amenity to adjacent land users.

## Other Matters

18. The submitted Unilateral Undertaking under s106 of the 1990 Act provides for mitigation of the impact of development on local infrastructure, services or amenities, and is dated 11 December 2014. Financial contributions are to be made towards education and open space, with further covenants in respect of entering into a highway agreement, and as already addressed in this decision, the commencement of development.
19. On the basis of the submissions by the appellant and Council, I note the conclusion which has been reached that the Unilateral Undertaking is in order and meets all the requirements set by the Council. I am satisfied that there is support within the Development Plan and Framework for seeking contributions towards local infrastructure and specifically education and open space, and that the requirement for a covenant to secure highway works is justified. I have already addressed the matters related to the commencement of the development. However, no justification has been provided by the Council in respect of the basis for calculation of the contributions towards education or open space provision. In the absence of this evidence, I cannot therefore conclude that the level of contribution is fairly related in scale to the development, and the requirement therefore has failed to meet the statutory test set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework. The Unilateral Undertaking therefore provides no weight in support of the proposals in respect of meeting the local infrastructure needs of education and open space provision, but would do so in respect of securing the highway works and the commencement of development.
20. Concerns have been raised by interested parties in respect of the impact of traffic generated by the proposed development on Busby Way and the existing highway network. I observed Busby Way to be a relatively quiet residential cul-de-sac as a result of its limited length and number of houses. However, the carriageway and junction with Glaisdale Road do not exhibit any specific characteristics which would suggest that it would be incapable of accommodating the additional levels of traffic that would be generated by the proposed development. In this respect, I have also been mindful of the conclusions reached by the Council as highway authority, and the consequent lack of objection on highway safety grounds. Therefore, in the absence of any detailed evidence to the contrary, and from my observations on site, I am satisfied that the proposed development would not have an adverse impact on highway safety.
21. Interested parties have also raised a series of additional concerns in respect of matters including the scale and design of the proposed dwellings, the potential for loss of privacy as a result of the overlooking of neighbouring properties, and the potential for loss of light from neighbouring gardens. However, I am mindful that the application and appeal have been submitted on an outline basis only with an indicative layout plan, and matters related to layout, appearance, landscaping and scale are to be dealt with as reserved matters. Whilst, these are issues which would be more appropriately addressed at the reserved matters stage, I am nevertheless content that it would be possible to accommodate a layout and form of development which would not result in an

adverse effect in respect of design and appearance, or the living conditions of neighbouring occupiers having regard to privacy and light.

22. I have also noted that a number of other issues have been raised including the potential for problems related to flooding and drainage, the impact on wildlife and protected species, the loss of a perfectly good house, and the potential for setting a precedent have been raised. However, I note that these issues were addressed by the Council in the report to the Planning Committee, and were not articulated into the Council's reasons for refusal, and I have no basis upon which to disagree with the Council's conclusions. Therefore, in the absence of any further detailed evidence before me, these are not matters which would justify refusal of permission for the scheme.

### **Conditions**

23. The Council has suggested a number of conditions which it considers would be appropriate were the appeal to be allowed. I have considered these in the light of paragraph 206 of the National Planning Policy Framework.
24. In the interest of proper planning, conditions relating to the identification of plans and submission and implementation of reserved matters would be necessary. The requirement for the proposed development to meet Code Level 4 in the Code for Sustainable Homes is clearly embedded within the development plan policies of the Core Strategy, and a condition to secure a reduction in energy consumption by the development, would be a reasonable requirement. The imposition of a condition to secure an appropriate level of affordable housing on the site would be reasonable to meet the identified housing needs of the area.
25. A condition related to the approval of a scheme to address foul and surface water drainage would address the potential for flooding on the site, whilst the approval of a scheme of highway works would ensure that the development would satisfactorily connect to the highway network. A condition seeking details of the levels of land on the site and the finished floor levels of the development would be necessary to safeguard the living conditions of neighbouring occupiers, whilst conditions to secure a scheme of structural landscaping and its subsequent management would mitigate its impact on the character and appearance of the area. A condition to address potential land contamination during the course of development would be in the interest of protecting human health and controlled waters, whilst conditions related to a bat dusk emergence survey related to the house to be demolished, and the timing of demolition in respect of the bird breeding season, would be necessary to protect wildlife.
26. The Council has also requested a condition related to the approval of a scheme detailing all means of enclosure on the site. However, in light of layout and appearance being reserved matters, I am not persuaded that such a condition would be necessary or reasonable in the context of the outline nature of this permission.

## **Conclusion**

27. For the reasons given above, and having regard to all other matters raised, the appeal should be allowed subject to the Unilateral Undertaking, and the conditions listed.

*M Seaton*

INSPECTOR

Attached – Annex – Conditions

Richborough Estates

## **Annex**

### **Conditions**

- 1) Details of the layout, scale, appearance, and landscaping (hereinafter called "the reserved matters") 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.
- 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 begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Other than as required by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Number ALA223L01 Rev PL01.
- 5) No development shall take place until the Local Planning Authority has approved a report provided by the applicant identifying how the predicted CO<sup>2</sup> emissions of the development will be reduced by at least 10% through the use of on-site renewable energy equipment or design efficiencies. The carbon savings which result from this will be above and beyond what is required to comply with Part L Building Regulations. Before the development is occupied the renewable energy equipment or design efficiency measures shall have been installed and the local planning authority shall be satisfied that their day-to-day operation will provide energy for the development for so long as the development remains in existence.
- 6) The dwellings hereby approved shall achieve a minimum of Level 4 of the Code for Sustainable Homes unless otherwise agreed in writing with the Local Planning Authority or any other equivalent Building Regulation rating at the time of the submission of the application for reserved matters.
- 7) A total of 15% - 20% of housing provision within the site shall be affordable in accordance with details which have been first submitted to and approved in writing by the Local Planning Authority. The details shall include but not be restricted to including the precise units to be affordable and the nature of tenure.
- 8) No development hereby approved shall be commenced on site until a detailed scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water. Thereafter the development shall take place in accordance with the approved details.
- 9) Notwithstanding the details hereby approved, the access into the site and the associated footpaths will be provided in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority prior to works commencing.
- 10) The development hereby approved shall be built in accordance with a scheme of finished floor levels which has been submitted to and approved

in writing by the Local Planning Authority prior to the development commencing on site. The scheme shall detail existing land level and levels of nearby properties as necessary as well as the finished floor levels of the proposed properties.

- 11) Structural landscaping shall be provided around the site in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority prior to the development hereby approved being brought into use.
- 12) No property hereby approved shall be sold until a Structural Landscaping Management Plan has been submitted to and approved in writing by the Local Planning Authority. The land forming the area of Structural Landscaping shall be retained as such and maintained in accordance with the approved scheme in perpetuity.
- 13) If during the course of development, contamination not previously identified is found to be present, then no further development on that phase shall be carried out until the developer has submitted to, and obtained written approval from the local planning authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be carried out as approved.
- 14) Prior to any demolition works to the house within the site a bat dusk emergence survey shall have been carried out between May and August, carried out by two surveyors and all bat activity shall be recorded and submitted to the Local Planning Authority for consideration. The house shall not be demolished until written agreement to this has been issued by the Local Planning Authority. In the event that Bat roosts are established further survey work shall be undertaken to the written satisfaction of the Local Planning Authority along with a mitigation scheme. The demolition shall be carried out in accordance with any agreed scheme.
- 15) Any landscaping removal works and building demolition works within the site shall be undertaken outside of the bird breeding season (March to August) unless a nesting bird survey has first been undertaken and submitted to the Local Planning Authority and the Local Planning Authority has confirmed agreement to any proposed removal.