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## Appeal Decision

Site visit made on 17 December 2019

**by D Hartley BA (Hons) MTP MBA MRTPI**

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

**Decision date: 23 December 2019**

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**Appeal Ref: APP/Z4718/W/19/3239659**

**Land west of Green Acres Close, Emley HD8 9RA**

- 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 Mr G Lloyd (Highstone Homes Ltd) against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2019/60/90380/E, dated 7 February 2019, was refused by notice dated 26 April 2019.
  - The development proposed is described as residential development with access into the site included.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is submitted in outline for residential development on the site and with all detailed matters reserved apart from access. It is proposed that the sole vehicular access into the site would be from Green Acres Close. An illustrative layout plan has been submitted showing 44 residential units on the site although reference is made by the appellant, including in the accompanying Transport Statement, to the erection of about 50 new dwellings. I have taken the illustrative layout into account in so far as considering only whether it would be acceptable in land use principle terms to erect dwellings on the site.
3. The Council adopted the Kirklees Highway Design Guide Supplementary Planning Document (SPD) in November 2019. This post-dates the Council's refusal of planning permission and I afford it significant weight as part of the determination of this appeal.

### Main Issue

4. There is no contention between the main parties about the acceptability of the proposal in land use principle terms. Indeed, the principle of residential development has already been established in so far that the appeal site is allocated for such a purpose in the adopted Kirklees Local Plan 2019 (LP). In considering this allocation, it is of note that the Examining Inspector commented that *"the Council's highway evidence indicates that the main site access can be achieved from Wentworth Drive, and no other fundamental constraints to development have been identified"*.

5. In the context of the above, I am satisfied that residential development on the site would be acceptable in land use principle. Therefore, the main issue is the effect of the proposal on pedestrian and highway safety.

### Reasons

6. It is proposed to access the site from Green Acres Close. Whilst Green Acres Close is wide enough to accommodate passing vehicles (about 5 metres in width), includes pavements on both sides and where there is on-street car parking for each of the dwellings, the same cannot be said for Warburton which currently serves about 80 dwellings. Any driver wishing to use Green Acres Close would have to use Warburton which is a road of about 280 metres long, is devoid of pavements for most of its length, includes on-street car parking (as witnessed on my site visit and in the appellant's/Council's surveys) and has varying widths.
7. I acknowledge the appellant's undisputed evidence that there have been no recorded accidents on Green Acres Close or Warburton in the last five years, although the evidence from Northern Transport Planning Limited (acting for local residents) does indicate that there were two accidents in the last five years on Upper Lane. I note that the appellant's highway consultant states that *"if the development and associated improvements didn't go ahead, then the highway concerns associated with the existing state of Warburton would remain"*. This does suggest to me, that the appellant is at least aware that there are some existing highway issues in respect of the use of Warburton.
8. Whilst there is some inconsistency in terms of the appellant's evidence, the Highway Authority do not dispute the fact that the proposal would lead to somewhere between 25 and 31 two-way trips during the morning and peak hours. I note the appellant's contrary opinion, but I consider that this range of trips would represent a significant increase in the number of vehicular movements in the context of the capacity and constraints of Warburton.
9. It is not proposed to provide highway design compliant footways along Warburton. Instead, it is proposed to provide 600mm wide 'hard margins' with 25 mm upstands as areas for pedestrians to step away from oncoming vehicles. However, that would not provide suitably safe areas for people with push chairs or wheel chairs. Furthermore, whilst the upstands would provide a useful physical feature for the blind/partially sighted when using a cane, the appellant indicates that owing to the height of the upstands it is intended that some drivers might use these areas particularly in places where carriageway widths are narrow. This would not be conducive to the safe use of the hard margins for any pedestrian taking into account the increased volume of traffic and average traffic speeds.
10. It is suggested that the hard margins might be of benefit in so far that drivers would then avoid walls and hedges, but I am not aware that this is an existing issue. Consequently, I do not afford this perceived benefit significant weight in the planning balance.
11. The provision of hard margins would likely have the effect of displacing some on-street car parking elsewhere in the local area. Whilst it could be said that at some times of the day there would be spare highway capacity to accommodate such displacement, I do note the significant number of representations made by other interested parties (including Northern Transport

Planning Ltd) about this matter, and the potential for any such displacement to cause some harm from a living conditions point of view. Furthermore, I have considered the photographs taken on 3 November 2019 by the occupier of 19b Rishworth Avenue which do show significant levels of on-street car parking on this day. Consequently, I do not agree with the appellant that *"very little on-street car parking occurs in this area"*.

12. I do accept that the appellant has proposed to improve two existing footpaths (surfacing and lighting) which lead to Upper lane, one leading from Green Acres Close and the other from the appeal site. This would offer some of the occupiers of the proposed dwellings alternative and acceptable pedestrian routes to Upper Lane. However, for some, and notwithstanding the provision of proposed lighting, such routes would in relative terms be more vulnerable options particularly at night given the lack of surveillance from occupiers of dwellings and passing motorists. Therefore, I am not persuaded that all of the occupiers of the proposed dwellings would avoid using Warburton as a pedestrian route.
13. For those who currently live close to or on Warburton (particularly those on the more northerly stretch of this road), I do not envisage that very many of these residents would use the aforementioned public footpaths regularly when wishing to reach Upper Lane. It is reasonable to take the view that for these people they would take the most convenient/quickest route to Upper Lane which would be along Warburton. Indeed, the appellant's pedestrian counts suggest that some do already despite the existence of the alternative pedestrian routes. It is in this context, that I must consider the proposed significant increase in the volume of traffic on Warburton and its impact on all pedestrians that would use this route. The appellant takes the view that there are not a lot of people that walk down Warburton. However, the safety of pedestrians is an important consideration irrespective of the number of people that do/would use Warburton.
14. The appellant claims that due to average traffic speeds, it is acceptable for pedestrians and vehicles to co-exists as part of a shared surface. Whilst there may be some instances where a shared surface would be acceptable, I do not consider that this one of those cases. I reach this view taking into account that the appellant's 85<sup>th</sup> percentile wet weather speeds are respectively 18.4 mph southbound and 20.5 mph northbound which is higher than that advised in the SPD; that there is no existing or detailed proposed traffic calming in Warburton; that Warburton is a relatively long road; that a number of cars do/would regularly park on Warburton particular along its western side near to the recreation ground; that a number of residential driveways on Warburton do appear to have visibility splays that fall short of highway requirements, and as Warburton would be used by a significant amount of traffic at odds with guidance in paragraph 1.6 of the SPD. I also note the undisputed evidence provided by the Council that on 24 July 2018 twenty-six on-street parked vehicles were observed.
15. It is of note that the terraced houses opposite the recreation ground have no on-site car parking: it is therefore likely that some of the on-street car parking in this area is associated with the occupiers of these dwellings. I acknowledge the appellant's road safety audit which states that the existing parking of vehicles in this area runs the *'risk that pedestrians will exit between parked cars into the path of passing vehicles'*.

16. With a significant increase in vehicular movements on Warburton, I consider that there is an even greater risk of pedestrians being struck by passing vehicles when having to exit between or manoeuvre around parked cars on Warburton. I accept that H bar markings are proposed in this area, but I have not been provided with any evidence that these would be enforceable. Given the amount of on-street car parking that takes place already on this part of the road, I am not persuaded that the H bar markings would stop all people from parking in these areas.
17. I appreciate that the narrow grass verge adjacent to the recreation ground could be used as an area for pedestrians to keep away from passing vehicles. However, this area would not be wide enough to accommodate all individuals (e.g. those with push chairs / wheel chairs) and, in any event, any such individuals that might be able to use such an area would then be unacceptably forced into the road and into oncoming vehicles near to the existing pedestrian access to the recreation ground. This may happen now, but that is in the context of much fewer vehicular movements in Warburton.
18. As part of my site visit, I was able to consider the width of the carriageway in Warburton with the provision of the proposed hard margins (i.e. 600 mm) and car parking bays. In particular, I was able to consider the provision of a proposed extended footway at the junction of Green Acres Close with Warburton. It was agreed on site that with the provision of such a build out the width of the highway (i.e. from the build out to the proposed hard margin) would be about 4.4 metres and with a parked car in this location (as was the case on the site visit) it would be approximately 2.5 metres.
19. I recognise that some drivers may look to bump over the hard margin at this point in Warburton given that space would be very tight. Some may not opt to do that particularly when pedestrians were in situ and given the close proximity of residential properties. Either way, there is potential for unacceptable conflicts between oncoming vehicles and/or with pedestrians in this part of Warburton which is also close to the junction with Green Acres Close.
20. I accept that the proposed works to the Green Acres Close / Warburton junction would provide some minimal improvements to visibility from the junction. However, this would be at the expense of narrowing the carriageway where the evidence, as outlined above, indicates that vehicles park opposite.
21. With the implementation of the appellant's proposed highway works, parts of Warburton would be of insufficient width to allow some vehicles to pass including in particular an HGV / refuse vehicle and a car. In this regard, it cannot reasonably be said that the proposal would represent an improvement relative to the existing situation. In fact, and given the significant increase in traffic on Warburton, I consider that it is likely that traffic flow on this road would be severely interrupted and that overall there would be unacceptable conflict between oncoming vehicles and pedestrians.
22. In reaching the above view, I note that the SPD states that "*the typical width of adopted carriageways is generally 5.5m. This allows all vehicles to pass each other with ease given the infrequency of large vehicles on residential streets. This width is only sufficient to cope with typical residential traffic provided that sufficient off-street parking is available*". I note that the appellant suggests that with the provision of the H Bar markings it would allow some vehicles to

pass. However, and for the reasons outlined above relating to enforceability, I consider that some motorists would likely park in these areas.

23. I do accept that the proposals include some improvements in Warburton (including at its junctions) such as the provision of dropped kerbs in some locations. This would make it easier for some to use Warburton (e.g. push chair and wheel chair users) without having to bump over kerbs.
24. I note that it is proposed to include new footways where the existing two public footpaths emerge at Upper Lane. It is also proposed to include a continuation of the footpath on Upper Lane to the junction with Warburton. I do acknowledge the Council's comment that these works would lead to a narrowing of Upper Lane and that there are no current on-street car parking restrictions along this highway.
25. Nonetheless, Upper Lane is not consistent in terms of its width and it is particularly wide in the vicinity of the junction of Warburton with Upper Lane (agreed on site at about 7.2 metres). Furthermore, the proposed footway at the entrance to the public footpath on Upper Lane (i.e. that close to Ellmont Avenue) would be approximately in line with the existing footway which runs from the junction of Warburton with Upper Lane. Furthermore, and subject to the consideration of a more detailed highway design, the proposed 'hard standing' opposite Church Street would take up only a small part of the width of the highway and would provide an improved link to the street lamp which I am informed is also used as a bus stop.
26. Overall, and notwithstanding the Council's concerns, I do not consider that the footway proposals on Upper Lane would lead to any significant conflicts between oncoming vehicles in the event of some on-street car parking. In fact, the proposals in Upper Lane would likely result in some relative improvements in pedestrian safety terms. Hence, these positive matters need to be weighed in the planning balance. In reaching the above view, and acknowledging that my site visit was only a snap shot in time, I also noticed that there were in fact very few vehicles parked in Upper Lane.
27. When the proposal is considered as a whole, I find that notwithstanding the proposed alterations to Warburton and its junctions, as well as improvements and extensions to existing public footpaths, for the reasons outlined above the proposal would have a significant and unacceptable impact on pedestrian and highway safety in Warburton. Whilst there may not have been any recorded accidents in Warburton in the past, this does not mean that accidents would not be likely if planning permission were to be approved. My concerns relating to highway and pedestrian safety in Warburton are matters of overriding concern and consequently I conclude that the development would not accord with the highway safety and traffic impact requirements of Policies LP5 and LP21 of the LP; the SPD and paragraph 109 of the National Planning Policy Framework.
28. In reaching the above conclusion, I am cognisant of the Council's preference to access the site from Wentworth Drive which in relative terms would be much better from a highway/pedestrian safety point of view. However, the appellant has pointed out that this option is not feasible/viable as it includes what has been described as four 'ransom strips' into the site with such land owned by numerous owners. There is in fact no policy requirement to access the site from Wentworth Drive: this is merely a Council preference. I have therefore



determined this appeal on its individual planning merits and based on accessing the site from Green Acres Close. Whilst the site is allocated for housing in the LP, this does not justify allowing the proposed development which would cause significant harm to highway and pedestrian safety in Warburton.

### Other Matters

29. The proposal would seek to positively boost the supply of houses in the area (including the appellant's agreement to provide affordable housing) and this in turn would also have some positive economic benefits in terms of spending in the local area and construction employment. However, the contribution towards boosting the supply of houses in the area would to some degree be tempered by the undisputed claim made by the local planning authority that it can demonstrate a deliverable supply of more than five years of housing sites. The proposal would seek to make some improvements to existing footpaths in the area and this is also a positive matter to weigh in the overall planning balance.
30. At final comments stage, the appellant has stated that "*Planning Resource has published the predicted 2019 Housing Delivery Test results for each Local Planning Authority*". They claim that the Council has not met its Housing Delivery targets. I have not been provided with this 'predicted' information and the Council has not commented on it. Nevertheless, and even if this were the case, the identified adverse highway and pedestrian safety impacts of the proposed development would significantly and demonstrably outweigh the identified benefits of the proposal when considered against the policies in the Framework taken as a whole.
31. I note that the appellant is content to provide affordable housing (20%) on site; to make a financial contribution towards education provision in the area; to provide public open space on-site and to make a financial contribution towards mitigating against adverse highway safety impacts. Both the appellant and the Council have suggested that this is a matter could be addressed by means of the imposition of planning conditions, with specific and detailed requirements to be secured by a Section 106 agreement in conjunction with the submission of a detailed reserved matters application.
32. In this case, I am not persuaded that it is appropriate to deal with the above matters by way of the imposition of planning conditions. The Planning Practise Guidance (PPG) states that '*ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed*'. I cannot see why such certainty cannot be achieved, even at this outline planning application stage, by means of the completion of a planning obligation. Indeed, this could be framed in such a way that the specific requirements were based on the quantum of residential development to be approved as part of a reserved matters consent.
33. In addition to the above, and taking into account PPG, the exceptional circumstances for including the Council's suggested negatively worded conditions (i.e. conditions 13 to 16) do not exist in so far that (i) there is no evidence that the proposal is at risk and (ii) the proposal is not particularly complex. It has, however, not been necessary for me to pursue the completion of a Section 106 agreement with the main parties as none of the necessary obligations would overcome my conclusion on the main issue.

34. At planning application stage, Sport England issued a holding objection pending the submission of a ball strike risk assessment given the close proximity of the appeal site to the adjacent cricket pitch. A ball strike assessment was not submitted by the applicant and the Council did not pursue this matter any further commenting that an acceptable risk assessment would not have overcome their overriding concern relating to the effect of the development on highway and pedestrian safety. The holding objection from Sport England is still in place. However, it has not been necessary for me to pursue this matter any further given my conclusion on the main issue and as I am dismissing the appeal.

### **Conclusion**

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

*D Hartley*

INSPECTOR

Richborough Estates