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# Appeal Decision

Site visit made on 28 April 2023

**by A M Nilsson BA (Hons) DipTP MRTPI**

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

**Decision date: 30 May 2023**

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**Appeal Ref: APP/A4710/W/22/3311416**

**Land off Scammonden Road, Barkisland, Sowerby Bridge HX4 0FP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by J & A Butterworth against the decision of Calderdale Metropolitan Borough Council.
  - The application Ref 22/00157/FUL, dated 14 February 2022, was refused by notice dated 16 November 2022.
  - The development proposed is a residential development of 12 dwellings.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the determination of the application the Council has adopted, on the 22 March 2023, the Calderdale Local Plan (2023). This replaces the Replacement Calderdale Unitary Development Plan (RCUDP) referred to in the decision notice and therefore these policies now have no weight in the appeal. The Council have commented that for the purposes of the appeal Policy BE1 of the RCUDP is replaced by Policy BT1 of the Calderdale Local Plan and Policy BE2 is replaced by Policy BT2 of the Calderdale Local Plan.
3. The Council have also highlighted that former Annex A (space about dwellings) of the RCUDP has been replicated with Annex 2 (space about dwellings) of the Calderdale Local Plan.
4. I have determined the appeal against the current development plan as is required.
5. Since the original decision, the appellant has submitted an amended site plan, drawing number 21-136-10C. They have also submitted a proposed site section, drawing number 21-136-12A. Neither of these plans were before the Council when it made its decision. The plans show relatively minor changes to the parking layout and surface treatments and include dimensions to properties. The dwellings themselves are unchanged.
6. As these are minor amendments, and the Council's concerns on the original set of plans are clear in their evidence, I do not consider that their interests, nor those of any third parties, would be prejudiced if I take these amended plans into account. I shall therefore determine the appeal on the basis of the amended and additional plans.

## **Main Issues**

7. The main issues are the effect of the proposed development on 1) the character and appearance of the area with specific regard to its design, 2) the living conditions of occupants of residential properties on Stonelea with specific regard to outlook and privacy and 3) whether or not the proposed development provides for affordable housing and education provision with specific regard to development plan policy.

## **Reasons**

### *Character and appearance*

8. The appeal site comprises an area of open grassland located to the east of Scammonden Road and to the north of Stonelea. It is bounded by agricultural land to its northern and eastern boundaries. There is a high voltage power line that crosses the site and the site has a notable descent towards Stonelea.
9. It is located in Barkisland which is a pleasant rural village with a range of housing styles and sizes. The appeal site, being located towards the edge of the settlement, is part of a transition zone between the rural edge and the more built-up part of the settlement. Due to the change in land levels, the site occupies a prominent position at the edge of the village.
10. The appeal site is allocated for housing in the Calderdale Local Plan (2023). The allocation acknowledges the constraint provided by the overhead power lines and includes an indicative developable area, which is to the south of the power lines and broadly comprises the area of the proposed development.
11. The allocation also identifies the Site Specific Considerations which include a requirement for a sensitive design and layout, responding to constraints on the site, taking account of past planning decisions regarding overhead power lines and residential amenity for neighbouring properties. It further identifies an indicative capacity of 12 dwellings is likely to be a maximum.
12. The Council do not dispute the principle of residential development on the site and given the allocation in the local plan I have no reason to form a different view. Policy SD6 of the local plan confirms that for those sites allocated for housing, planning applications will need to address the issues that have been identified. For the appeal site, these are the issues identified in the site-specific considerations, and it is therefore a policy requirement that these issues are addressed.
13. The proposed development would comprise 6no. pairs of semi-detached properties in a staggered linear form. The layout has been largely dictated due to the constraint of the overhead power lines. Due to the topography of the land, they would be prominently positioned and be highly visible when entering the village from Scammonden Road and also from Greetland Road.
14. In terms of the surrounding housing development, there is a variation to the size and style of properties. Pinfold Close, to the west of the appeal site reflects a more spacious form of development with detached properties and generous front gardens. Stonelea, to the south of the appeal site is a more tightly arranged development with a varying degree of separation between properties, although most properties have landscaped front gardens, which positively

contributes to the character of the area. Elsewhere in the village there is also terraces of properties.

15. Given that there is no development on the site at present, any development would inevitably result in a marked visual change. Whilst the properties may not be as spaciouly arranged as those in Pinfold Close, having regard to those elsewhere in the village, I do not consider that they would be harmfully out of character. The staggered arrangement, different levels, and albeit relatively small gaps, would break up their overall form. In allocating the site for housing development, a notable visual change from the open land that currently exists is inevitable.
16. The development includes an internal access road that has 8 parking bays and a turning head. Apart from the final pair of semi-detached properties, each of the other pairs of dwellings have a continuous and unbroken frontage made up of hard surfaces to provide for parking and pedestrian access. It is indicated that 27 vehicles could be parked in front of the properties.
17. Due to the dominance of frontage car parking and the provision of other hard surfaces throughout the development, the overall design of the development would be particularly poor. It would give the development a bleak and unnatural appearance. Although small indicatively landscaped strips are proposed, these would be rather tokenistic and ineffective in terms of providing a high-quality development with effective landscaping.
18. There would be a stark absence of any form of front gardens, which is one of the positive characteristics of much of the surrounding housing. There would also be very limited opportunity for any meaningful front boundary treatments, which although absent in many of the open plan developments in the village, are nevertheless more prevalent in residential properties towards the rural edge of the settlement.
19. The Council referred to the scale of the development causing harm in this prominent location. I acknowledge that owing to the provision of roof-level accommodation the resulting ridge height is greater than some surrounding properties. Notwithstanding my consideration in relation to the impact of the development on living conditions, I do not consider that the scale of the dwellings, which are otherwise architecturally acceptable with good quality materials, would cause harm.
20. In terms of capacity, the appellant considers that the Council have ignored the capacity of the site contained in the Site Specific Constraints. This however identifies the capacity of 12 dwellings as 'indicative' and 'likely to be a maximum'. Whilst I have not found specific harm in terms of the number of dwellings proposed, although this inevitably has implications in terms of layout etc, it is not a requirement that 12 dwellings are provided on site.
21. Therefore, although I have found aspects of the development to be acceptable in terms of the impact on the character and appearance of the area, the dominance of parking and hard surfaces in the development results in it failing to deliver a high-quality, visually attractive development. It would therefore cause significant harm to the character and appearance of the area and be contrary to Policies BT1 and SD6 of the Calderdale Local Plan (2023). These policies require, amongst other things, that new developments are of high quality, respecting or enhancing the character and appearance of the

surroundings, taking into account its local context and distinctiveness; and that the development of the appeal site is of a sensitive design and layout.

22. The proposal would also be contrary to Chapter 12 of the National Planning Policy Framework (the Framework) (2021) which outlines, amongst other things, the creation of high quality, beautiful places is fundamental to what the planning and development process should achieve. It is also outlined that decisions should ensure that developments add to the overall quality of the area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; and are sympathetic to local character including landscape setting. The Framework also outlines that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

### *Living conditions*

23. The appeal site is located to the north of residential properties of Stonelea. The appeal site slopes downwards towards these properties where the descent is continued in the rear gardens of those properties that overlook the appeal site. Other properties present their side elevation towards the appeal site.
24. The local plan allocation identifies the Site Specific Considerations which include taking account of past planning decisions regarding residential amenity for neighbouring properties. It is a requirement of Policy SD6 that these issues are addressed.
25. Annex 2 of the local plan sets out guidance on space about dwellings, drawing on the requirement in Policy BT2 which seeks to ensure good design, particularly in residential areas, by ensuring that adequate space about buildings is achieved. The annex sets out the minimum distances that will be applied in assessing residential development proposals. The guidance acknowledges that the distances are not rigid, rather that it provides an indication of the standards which will be applied with a measure of flexibility in appropriate circumstances.
26. The annex also identifies that in certain instances, due to changes in ground levels, development may have the potential to significantly overlook or overshadow an existing dwelling. In such circumstances separation distances should be greater than the guidance set out in the annex. The table in the annex<sup>1</sup> outlines that from main aspects, front to back, a minimum distance of 21m should be achieved.
27. No 63 Stonelea presents its side elevations to the appeal site and the proposed dwellings. Due to the position of this property and its habitable room windows, when considered against the position of dwellings and their habitable room windows in the proposed development, I do not consider that there would be unacceptable harm caused to the living conditions of the occupants of this property.
28. On my site visit I was able to view the appeal site from both internally and externally at nos. 65 and 67 Stonelea. Plots 3 and 4 of the proposed development would be just over 21m from the rear elevation of no. 65 which contains living room and bedroom windows. The garden of this property rises towards the appeal site where the ascent continues to the position of the

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<sup>1</sup> Table A2.1 Privacy, Daylighting and Amenity Space Guidance

- proposed dwellings. Due to the siting, overall scale and windows of plots 3 and 4 there would be an unacceptable impact on the levels of privacy for this property, where for these same reasons, including the mass of the development, they would also appear overbearing. This is despite the fact that the proposal would achieve the minimum separation of 18m from main (living room) to secondary (bedroom) windows. The separation as it relates to no. 67 is marginally greater, with this dwelling also having a direct line of sight to plot 5 which is around a 30m separation. The harm to no. 67 is therefore less than that to no. 65.
29. The Council set out that no. 69 is around 30m from the rear elevation of plots 5 and 6. Accounting for the difference in levels I consider that the separation would be sufficient to ensure that there would not be unacceptable harm to the occupants of this property in terms of overlooking or outlook.
30. No. 77 presents its side elevation to the appeal site, however the rear outlook and garden would encompass the proposed development in close proximity, where due to their scale, siting, window positions and the elevated nature of the development, there would be minor harm to the living conditions of occupants of this property in terms of their privacy and outlook, including that of the garden.
31. The slope of the appeal site begins to lessen in an eastward direction so that its relationship with no. 80 is not as steep as elsewhere. The separation, at just over 17m would however be less than that outlined in the guidance, and this would cause harm in terms of overlooking and being overbearing.
32. Although the separation from the existing and proposed dwellings does in many instances meet with the minimum distances as set out in annex 2, it is clear that the topography of the appeal site, and those properties closest to it, is such that it is one of the circumstances whereby the effect of the slope warrants a greater separation than the minimum amount which is specified.
33. I have been referred to a previous appeal<sup>2</sup> where the Inspector observed that due to the distance between the existing and proposed properties, together with the configuration of the rooms in both the existing and proposed developments, as well as the proposed boundary treatment that there would not be an unacceptable impact on the outlook and living conditions of the residents of the existing properties. In doing so the Inspector highlighted that they were aware of the difference in levels between the existing and proposed development.
34. Although the dwellings were of a similar alignment, the evidence shows that they were proposed to be dormer bungalows, and thus of a different scale to the development before me. This limits the weight to be given to the decision. The decision also pre-dates the current local plan and the matter was not a main issue in the appeal. Either way, I am not bound by the previous decision and have come to my own conclusions based on the evidence before me and my observations on my site visit.
35. In another earlier appeal<sup>3</sup>, an Inspector took the view that an outline proposal for six, two and a half storey dwellings, five of which would be a similar alignment to those currently proposed, that there would be significant harm to

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<sup>2</sup> Appeal Decision APP/A4710/W/15/3003726

<sup>3</sup> Appeal Decision APP/A4710/A/13/2197123

the living conditions of residents of Stonelea with regard to outlook and privacy. The Inspector considered that due to the significant difference in land levels, the height of the dwellings proposed and their close proximity to dwellings on Stonelea, would lead to additional harmful levels of overlooking. The Inspector considered that there would be very few activities that could take place in the rear rooms and gardens of the existing dwellings without being overlooked by the future occupants of the proposed development. This, the Inspector considered, would lead to a consequent loss of privacy for neighbouring occupants when using their bedrooms, kitchens, living rooms, dining areas, an office, a conservatory and gardens, particularly the outdoor seating areas. It was also considered that due to the close proximity of the proposed dwellings, the proposal would dominate the outlook from rear habitable rooms and gardens of neighbouring dwellings; and would have an overbearing effect.

36. I have considered the findings of both appeals in my decision insofar as they are material to the current appeal.
37. The proposed development would therefore cause significant harm to the living conditions of occupants of residential properties on Stonelea with specific regard to outlook and privacy. It would be contrary to Policies BT2 and SD6 of the Calderdale Local Plan (2023). These policies require, amongst other things, that development proposals should not result in a significant adverse impact on the privacy, daylighting and private amenity space of adjacent residents or other occupants and should provide adequate privacy, daylighting and private amenity space for existing and prospective residents and other occupants.
38. The development would also be contrary to the requirement outlined in Chapter 12 of the Framework that developments create places with a high standard of amenity for existing and future users.

#### *Affordable housing and education provision*

39. Policy HS6 of the local plan sets out that the Council will not require an inclusion of an element of affordable homes in housing developments of 10 units or less. Affordable housing provision is required in developments of 11 units or more, and thus applicable to the proposed development. Table 19.6<sup>4</sup> confirms that for Barkisland, the affordable housing requirement for developments of more than 10 dwellings is 35%, which the Council state for the proposed development would be 4 units.
40. This policy reflects the requirement in paragraph 65 of the Framework that where major development involving the provision of housing is proposed, planning decisions should expect at least 10% of the total number of homes to be made available for affordable home ownership.
41. Both the local plan and the Framework set out a number of exceptions to the provision of affordable housing, however none have been put forward in this case.
42. The fact that the affordable housing requirement as set out in the local plan was not in place at the time of the decision, or formed a reason for refusal, does not relieve the requirement on the development to comply with the policies in place at the time of this decision.

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<sup>4</sup> Provision of Affordable Housing to Meet Policy HS6

43. The appellant does not object to entering into an agreement to secure the required affordable housing, however no agreement is before me.
44. The Council have also set out the requirement for a contribution to be made to education provision. This stems from Policy IM10 of the local plan which outlines that applications will be permitted where mechanisms are in place to ensure that the impact of the development on infrastructure can be satisfactorily mitigated. In applying this policy regard will be had to the Council's Infrastructure Delivery Plan and any adopted Supplementary Planning Documents. This policy is consistent with paragraph 34 of the Framework in relation to development contributions.
45. It is a reasonable assumption that a development of this scale and nature, comprising of family sized dwellings, would result in additional demand in terms of education provision. The appellant disputes the figure put forward by the Council on the grounds of lack of justification in terms of the amount requested, namely £37,234. Whilst the background to the figure is not before me, the requirement as a matter of principle would be reasonable and necessary. Either way, there is no agreement before me to secure any such contribution.
46. The proposed development would therefore fail to make the necessary provision towards affordable housing and education as required. It would be contrary to Policies HS6 and IM10 of the Calderdale Local Plan (2023) and the Framework.

### **Other Matters**

47. The proposal would develop an allocated housing site that is in a sustainable location. It would result in a slight increase in the Council's overall housing number. It would also bring a small number of additional residents to the area who would contribute to the local economy, and the dwellings would incorporate solar panels and low carbon technology. These are benefits of moderate weight in favour of the appeal.
48. The most recent Housing Delivery Test results (January 2022) show that 55% of the number of homes required in the Council area have been delivered. This is substantially below (less than 75%) of the housing requirement. In light of the extent of the shortfall, the delivery of the dwellings as proposed represents a benefit of significant weight in favour of the proposed development.
49. Although the proposed development would deliver housing on an allocated housing site, I have nevertheless identified that it would conflict with those policies designed to deliver well designed developments, ensure there is not unacceptable harm to living conditions, and secure the provision of affordable housing and infrastructure requirements. These policies are consistent with the aims of the Framework in terms of achieving high quality design in developments, ensuring good standards of amenity, and delivering affordable housing and other infrastructure requirements. This alignment increases the weight given to the policy conflict. Therefore, cumulatively, the conflict with those policies results in the development conflicting with the development plan when taken as a whole.
50. Paragraph 11 (d) of the Framework requires that where there are no relevant development plan policies, or the policies which are most important for

determining the application are out-of-date, developments should be granted planning permission 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.

51. This applies to applications involving the provision of housing in situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
52. Since the adoption of the local plan, the Council are able to demonstrate a five-year supply of deliverable housing sites. The most recent Housing Delivery Test results (January 2022) however show that the delivery of housing was substantially below the housing requirement over the previous three years. It therefore follows that paragraph 11 d) of the Framework is engaged.
53. In terms of the proposed development, the starting point is therefore that permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits.
54. In this case the adverse impacts of the proposal in terms of the failure to deliver high quality design that would cause significant harm to the character and appearance of the area, the harm to the living conditions of existing occupants of nearby residential properties, and the failure to deliver affordable housing and other infrastructure requirements, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. These policies include; a requirement for development to be visually attractive as a result of good architecture and layout including being sympathetic to local character, including the surrounding built environment and establish a strong sense of place, using the arrangement of streets and spaces to create attractive, welcoming and distinctive places to live; developments to provide a high standard of amenity for existing users; and deliver affordable housing and other infrastructure requirements.
55. The proposal does not therefore benefit from the presumption in favour of sustainable development given by paragraph 11 of the Framework.

### **Planning Balance and Conclusion**

56. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
57. The outcome of the Framework paragraph 11 d) process above indicates that the decision should be taken in accordance with the development plan.
58. The proposed development would result in a slight increase in the Council's overall housing number and would develop an allocated housing site in a sustainable location. It would also bring a small number of additional residents to the area who would contribute to the local economy. When combined with the significant shortfall in terms of housing delivery, collectively, I give these matters significant weight in favour of the proposed development.
59. However, the harm that I have identified that would be caused to the character and appearance of the area, the living conditions of occupants of existing

residential properties and the failure to provide for affordable housing and other infrastructure, attracts greater significant weight that outweighs the benefits associated with the proposed development.

60. The proposed development would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.

61. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*A M Nilsson*

INSPECTOR

Richborough Estates