



Appeal Decision

Site visit made on 11 March 2025

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2025

Appeal Ref: APP/X1355/W/24/3353610

Land to the south of Greenways Court, Greenways, Delves Lane, Consett, DH8 7DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Metaco Construction Ltd against the decision of Durham County Council.
 - The application Ref is DM/23/00870/OUT.
 - The development proposed is an outline application (with access) for up to 32 no. affordable residential units and 8 no. self-build/custom build plots (all other matters reserved).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with approval sought for access. Layout, appearance, landscaping and scale would be the subject of future applications for approval of reserved matters. Plans were submitted showing the access and an indicative layout of the site. Indicative plans have been treated as such.
3. Following the Council's decision on the application, a planning obligation has been submitted with the appeal which secures the submission of an affordable housing strategy, open-space compensatory payments, a contribution towards primary care, and a contribution towards secondary education provision. As such, the Council's second reason for refusal, that the development would fail to make necessary financial contributions, has fallen away.
4. A revised National Planning Policy Framework (the Framework) was published in December 2024, after the final comments stage in this appeal. Comments were sought from the parties on any effects on their cases. These have been taken into account in my decision.

Main Issues

5. The main issues are whether or not the proposal would cause an unacceptable loss of open space and whether or not there is a need for the level of affordable housing proposed.

Reasons

Open space

6. Policies in the County Durham Plan adopted 2020 (the Plan) set out criteria for the assessment of development proposals on unallocated sites (Policy 6) and the assessment of the effects of proposals on green infrastructure (Policy 26). Notably, Policy 6 requires that development on unallocated sites does not result in the loss of open land that has “recreational... value, or contributes to the character of the locality which cannot be adequately mitigated or compensated for”. The appeal site is an unallocated site, currently open, and apparently leased to the Council as open space.
7. It is clear from the Council’s decision, representations made to the Council, representations made to the Planning Inspectorate and from my site visit that the appeal site is a well-used and highly-valued area of open space.
8. Despite the case of the appellant, and their attempt to downplay the value of the site through describing it as bland, monotonous and the result of poor urban planning, the site is obviously well-used by local residents, with clear evidence on the ground of regular use. This includes well-worn desire lines around and across the site, the well-worn path to Meadow Close, obvious evidence of dog walking around it, as well as somewhat unfortunately, litter. During my cold, damp, early-Spring, working-hours, weekday site visit, the date, time and duration of which was not widely publicised, there was no single point at which the site was empty and not being used for recreation. Substantial evidence from third-parties reinforces this recreational use, with reference to recreation, informal play and a mixture of formal and informal community events. The base mapping of the Site Location Plan also labels the site as a “Playing Field” with a (now removed) playground in one part.
9. The value of the open space, particularly in perceptual terms will also increase as the new housing development to the south-east continues to progress beyond the site, enclosing the fourth side of it in built form.
10. The appeal, like the application, is accompanied by an Open Space Needs Assessment prepared by the appellant (the A-OSNA) which builds on the Council’s 2018 Open Space Needs Assessment (the C-OSNA).
11. On my site visit I was also able to visit all of the other areas of Local Open Space which the appellant referred to in the A-OSNA. I accept that these open spaces are not a particularly long walk away from the appeal site. However, I do not consider the proximity of open spaces to each other to be the sole, or indeed, the most important metric by which to measure their value or their suitability as alternatives to the appeal site should it be developed.
12. Although some of the open spaces nearby are similar to the appeal site, they do not have the same characteristics, nor do they, or could they serve the same role as the appeal site. In addition, given the very dense nature of the housing immediately surrounding the appeal site and the other nearby open spaces, it seems to me more appropriate to consider the open spaces as central points, then to work outwards through housing areas in order to assess likely value and use.

13. The appellant has measured, in their A-OSNA, the distance from the site to alternative areas of open space. That is not the same as measuring the distance to the existing open space from housing areas. For example, housing which may be at the limit of the access standard distance to the appeal site could, following the proposal, be beyond such distances from suitable alternative open space. Evidence on this point is unclear but given the overall position on open-space accessibility and amount in the area, it is important that proposals should not worsen open-space accessibility. This finds support in the Plan and in national policy.
14. The closest alternative open space of the same OSNA-type is very different to the appeal site. It is less open, has more vegetation and over-grown parts and has a large, enclosed formal sports pitch at its core. Given that, it is not available for free and spontaneous use in the same way as the space it is suggested as an alternative to. It therefore has a different value to the appeal site and cannot reasonably be considered an equivalent alternative. In light of the above, the site is valued, has a significant recreational value and contributes to the character of the locality.
15. Although the appellant has suggested that the more formalised, maintained and designed public open space associated with the development would be a suitable alternative to the loss of the current site, I have significant reservations over this. Plainly such space would be less in terms of quantity, and would, for example, not be available for formal, or indeed, informal community events and gatherings in the same way as apparently take place on the site at present. In addition, I am concerned that the alternative open space within the proposal, the quality of which is intended to mitigate for the loss of current quantity, would be managed by a landscape management company paid for by resident contributions managed by a community committee.
16. Given such an arrangement, I am not convinced that open space within the proposal would necessarily be as accessible as at present, that access would be encouraged (or at least not discouraged) in the same way as at present, or that the open space would be available for free and spontaneous use in the same way as the space it proposes to replace.
17. Whilst I acknowledge the proposal to make a financial contribution to compensate for the loss of open space and the provision of new or improved facilities, I am unclear what this would achieve in practice, in direction response to this proposal, and how it would practically compensate for the loss in this area arising from the loss of this site.
18. Both the Council and the appellant accept that there is a shortfall of all open space types except for allotments in the North West sub area, with a 21.3ha shortfall of Amenity Green Space, the open-space classification of the appeal site. Whilst I acknowledge the efforts of the appellant to suggest that at a neighbourhood level there is sufficient provision of open space, and that there is a cluster of space around the site which mitigates its loss, I am not persuaded by this approach.

19. Plainly, such an approach to open space provision and accessibility is possible, however, it is not the one taken by the Council in the C-OSNA, and I am not convinced that such a close-focus approach is the right one to take in assessing open space availability and accessibility, particularly given the dense nature of the housing in the area and the new housing development nearby. My conclusions on the nature of the alternative open spaces around the site above reinforce my findings on this point.
20. The proposal has not therefore clearly shown that the open space provided by the site is surplus to requirements, nor has it shown that suitable mitigation and appropriate provision of equivalent or greater value would be provided in a suitable location.
21. In reaching these conclusions, I acknowledge the point made by the appellant that the C-OSNA is not a development plan document, and as such, does not have the same status. It is however clearly a part of the evidence base for the Plan, and I give it weight in light of that. However, I do not consider that I should therefore set the C-OSNA aside, particularly as the appellant has used that document as a foundation for their own case and the A-OSNA. Even without the C-OSNA, given the evidence before me, including representations and my observations on site, the proposal would not pass the tests for loss of open space in Policies 6 and 26 of the Plan.
22. Overall then I find that the proposal would result in the loss of open space and land which has recreational value and which contributes to the character of the locality. The evidence does not demonstrate that its loss could be adequately mitigated or compensated for. The proposal would also, through the loss of an area of open space providing visual relief in an otherwise densely built area, not be appropriate to the character of the existing settlement and would harm the amenity of the area through visual intrusion.
23. It would therefore lead to an unacceptable loss of open space, in direct conflict with the detailed requirements of Policy 6, 26, 29 and 31 of the Plan, but also the Plan read as a whole.

Affordable housing

24. The Council and the appellant appear to agree that there is a need for affordable housing in this area. Indeed, the remaining matter of dispute appears to be the nature and tenure of the affordable housing to be provided on the site, rather than the overall amount as set out on the decision notice. The appellant suggests that this matter can be addressed at a later stage, through the reserved matters process and the submission, for approval, of an Affordable Housing Statement. The submitted planning obligation makes provision for the submission of the same, as does one of the conditions suggested by the Council.
25. As such an approach is not unusual, and as both parties have provided a mechanism by which the nature and tenure of affordable housing can be secured, I am satisfied that there is a need for the level of affordable housing proposed, and it would be appropriate to secure the detail of that provision at a later time. In this regard, the proposal does not therefore conflict with Policy 15 of the Plan.

Other Matters

26. Reference has been made by third-parties to a legal covenant restricting development of the appeal site. The planning process does not override separate legal rights, nor does it provide legal rights where none currently exist. As such, it would remain for the appellant to secure such rights, separately from the planning application and appeal process.

Conclusion

27. In considering the issue of open space, I find that the Plan is consistent with the Framework. The Framework is clear on the importance of access to high quality open space, as well as the need to only build on existing open space where the space is surplus to requirements and where that loss would be replaced by equal or better provision.
28. Whilst I have found that the proposal would contribute towards meeting an affordable housing need, it could only do so at the cost of what I find to be an unacceptable loss of green infrastructure in the form of open space, protected in local and national policy. I have set out above how the proposal does not pass the tests around these requirements in the Plan, and for the same reasons, find that it does not pass the relevant tests in the Framework. I note the reference to a different appeal decision, in a different Council area on a similar point. However, whilst consistency in decision making is an important part of the planning process, all decisions are made on the particular merits of the case, including consideration of the peculiarities of the site, its surroundings and the effects of the proposal.
29. As such, it would directly conflict with the development plan, and I do not find that the benefits arising from the proposed new homes would outweigh the harm that would be caused to the wider community as a result of the loss of that valued open space.
30. I accept that the Framework, and in particular, recent revisions to it, place a great, and strengthening value on the delivery of housing and affordable housing in particular, as well as on the contribution of small and medium sites such as this one. I also accept and cannot turn away from the substantial uplift in homes, of all tenures which will be required in County Durham under the new standard method later this year, or the overarching political support for housebuilding.
31. However, neither the Framework nor the Plan value and seek housing delivery at all costs. Both require a balance to be struck between housing and other factors, including here, open space. I am not satisfied that in this case, that balance weighs in favour of the proposal, especially in light of the obvious value of the site as open space.
32. Nor am I persuaded that an expected future shortfall in housing delivery, either market or affordable, in light of the new standard method calculations means that I should reach a different conclusion.

33. At this time, the Council has a sufficient supply of housing land, and the policies in the Plan are up-to-date. Even were I to take into account the future housing requirement figures as the appellant would have me do, in my view, the unacceptable loss of green infrastructure in the form of valued open space would be an adverse impact which would significantly and demonstrably outweigh the benefits of the proposal when assessed against policies in the Framework taken as a whole, having particular regard to key policies, notably on directing development to sustainable locations, making effective use of land, and securing well-designed places.
34. The proposal does therefore conflict with the development plan when read as a whole, and although there are material considerations which weigh in favour of it, they are not so significant as to indicate that a decision be taken other than in accordance with the development plan.
35. The appeal should therefore be dismissed.

S Dean

INSPECTOR

Richborough