



# Appeal Decision

Site visit made on 18 May 2009

by **Malcolm Rivett** BA (Hons) MSc MRTPI

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

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Decision date:  
28 May 2009

**Appeal Ref: APP/N1350/A/09/2097805**

**Mown Meadows, 64 Middleton Lane, Middleton St George, Darlington,  
DL2 1AD**

- 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 Mr Chris Brockbank against the decision of Darlington Borough Council.
- The application Ref 08/00354/FUL, dated 22 April 2008, was refused by notice dated 12 August 2008.
- The development proposed is 2 no detached 4-bedroom houses for rear garden to 64 Middleton Lane along with shared driveway and all associated works.

## Decision

1. I dismiss the appeal.

## Main issue

2. The main issue of the appeal is the effect of the proposal on the provision of affordable housing.

## Reasons

3. Policy H9 of the adopted *Borough of Darlington Local Plan* indicates that, where a local need has been identified, the Council will negotiate with developers an element of affordable housing on new housing sites. The adopted *Darlington Affordable Housing Supplementary Planning Document 2007* (SPD) elaborates on policy H9, sections 4 and 5 of it identifying that because of the acute affordable housing need in Middleton St George, 40% of new dwellings on proposed developments there, of five or more units, should be affordable. Paragraph 4.4 of the SPD indicates that the Council will be alert to the subdivision of sites or phasing of developments as a means of circumventing the requirement to provide affordable housing. It states that for the purposes of establishing the affordable housing requirement planning applications will be taken as relating to any naturally defined larger area, normally meaning the curtilage of the property. It goes on to state that if development is proposed in phases, later phases must fulfil affordable housing requirements from previous phases where it has not already been provided.
4. The appeal proposal would provide two dwellings within the curtilage of the existing house at no 64, such a scheme, alone, falling below the threshold requiring the provision of affordable housing. However, I understand that since 2006 there have been various proposals for the curtilage of this property, involving the provision of five or more additional dwellings, including a scheme

granted permission in 2008 for the erection of three new dwellings and the conversion of the existing property into four flats. This approval was the subject of a s106 agreement requiring two affordable dwellings on the site. In view of this history I consider that the whole of the curtilage of no 64 is the natural boundary of the site and that the appeal proposal can be reasonably considered to be an, albeit amended, sub-division of the previously approved scheme. Thus, in accordance with the SPD, arrangements are necessary to ensure that, should additional dwellings be subsequently developed within the curtilage of no 64 (resulting in a total of five or more new dwellings) an appropriate number of these will be affordable accommodation.

5. Whilst pointing out that in isolation the proposal does not require the provision of affordable housing, the appellant appears to accept the principle of the contention set out in paragraph 4. As part of the appeal he has submitted a unilateral undertaking requiring two affordable units to be provided if the remaining curtilage of no 64, outside of the appeal site, is developed for four flats. I also understand that the proposal was formally resubmitted to the Council accompanied by the undertaking but was refused under delegated powers. However the undertaking is subject to a clause meaning that it would cease to have effect five years after the grant of planning permission for the appeal scheme. Thus, in five years time no 64 could be developed, as previously proposed, for four flats (resulting, together with the current proposal, in a total of five additional dwellings within the property's curtilage) without any affordable accommodation.
6. I have seen nothing to indicate that five years from now the need for affordable housing in Middleton St George is likely to be significantly less than at present. Consequently, with such a clause in the undertaking (and bearing in mind the potential for future housing development within the curtilage of no 64) I cannot be satisfied that the appeal proposal makes appropriate provision towards the affordable housing needs of the area. It thus conflicts with the SPD and the objectives of policy H9 as set out above.
7. The appellant argues that the five year period reflects the uncertainty of current market conditions and also enables the Council to take account of future changes to planning policy with regard to the need for, and provision of, affordable housing in the area. However, in ceasing to be of effect, in its entirety, after five years, the undertaking provides no opportunity for the Council to take account of any changes in the need (either greater or less than now) for affordable housing with regard to development within the curtilage of no 64. Whilst I accept that it is difficult to predict market conditions for housing into the future, I consider that any uncertainty for the developer does not outweigh the need for development of the property's curtilage to make appropriate provision towards the area's acute affordable housing needs. Moreover, after a period of five years, legislation allows for the appellant to apply to the Council for an undertaking to be modified or discharged, with the right of appeal if the application is refused. Thus, I am satisfied that were the need for affordable housing in Middleton St George to be reduced or eliminated at the time of development of the flats, the appellant could seek to be released from a time-unlimited obligation. Consequently, I conclude that the five year limit clause in the undertaking is inappropriate.

8. I appreciate that officers recommended approval of the scheme without any arrangements being in place in respect of affordable housing. However, I do not accept the appellant's contention that the Committee's reason for refusal is spurious, given the contents of the adopted SPD and my findings above. I have no evidence to suggest that the objections of local residents inappropriately swayed the Committee. Indeed, it appears to me that, aside from the five year limit clause in the undertaking, the Council now has no objection to the proposal. I note that permission was recently granted, on appeal, for two houses in the rear garden of 63 Middleton Lane without any arrangements for future affordable housing provision. However, from what I have read there is nothing to suggest that development of this property's curtilage for five or more new dwellings has ever been proposed or is a likely proposition, unlike at no 64.
9. I have noted the comments about the acceptability, in principle, of additional housing on the site and the appellant's response to local residents' concerns about the scheme. However, nothing I have read leads me to alter my decision based on the main issue of the appeal.
10. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Malcolm Rivett*

INSPECTOR

