



Appeal Decision

Site visit made on 21 September 2021

by **S Hunt BA (Hons) MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 12th October 2021

Appeal Ref: APP/N1350/W/21/3271227

Land North of Burtree Lane, Darlington

- 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 Bellway Homes Limited and Lateral Investments Ltd against the decision of Darlington Borough Council.
 - The application Ref 19/01072/OUT, dated 15 November 2019, was refused by notice dated 20 November 2020.
 - The development proposed is Outline application with associated access for residential development up to 150 dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline form however the application form fails to specify which matters of detail are to be considered. The description given by the Council as set out on the decision notice refers to all matters being reserved for subsequent determination except for access, as does the appellant's statement, therefore I have dealt with the appeal on this basis.
3. Indicative plans have been submitted which show how the site might be developed for 150 dwellings together with areas of open space and landscaping, and I have taken these into account in my decision.
4. The appellant's statement of case includes a number of appendices which relate to a topographical survey of the highway which was carried out after the Council made its decision. The details provide additional information to assist in consideration of the third reason for refusal and do not comprise revisions to the proposed development within the appeal site therefore I am satisfied that the Wheatcroft¹ principles have not been prejudiced.
5. A revised version of the National Planning Policy Framework (the Framework) was published in July. I have referred to the relevant paragraphs from the revised Framework where necessary in my decision.
6. A signed and completed Section 106 Agreement (S106) has been submitted, including obligations relating to various social and infrastructure contributions. From the evidence before me I am satisfied that the obligations would accord with the three tests set out in paragraph 56 of the National Planning Policy

¹ Bernard Wheatcroft Ltd v.SSE (JPL 1982 P37)

Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations 2010 (as amended). I have had regard to the provisions of the S106 in the consideration of this appeal.

Main Issues

7. The main issues are:

- Whether the proposed development would be in a suitable location for development having regard to the development plan and national policy;
- The effects of the proposed development on the character and appearance of the surrounding area; and
- Whether the proposed development would be accessible, with particular regard to the provision of footway links for non-motorised users.

Reasons

Location

8. The appeal site is situated outside of the development limits of the town of Darlington as shown on the proposals map of the Borough of Darlington Local Plan 1997 (BDLP). It is therefore situated in the countryside for the purpose of planning policies. Policies E2 and H7 of the BDLP make provision for some development in the countryside on an exceptional basis. There is no suggestion that the appeal scheme would meet any of the exception criteria within the policies. Whilst the site is detached from the development limits, it is not isolated in the meaning of paragraph 80 of the Framework given that a small row of dwellings lies immediately adjacent to the site fronting Burtree Lane.
9. I acknowledge that the Council have already approved two large housing sites situated in close proximity to the appeal site contrary to their policies which seek to restrict development in the countryside. Site 003, south of Burtree Lane (also referred to in the evidence as the 'Theakston site')² and Site 008 (Berrymead Farm)³ would eventually bring the urban edge of Darlington closer to the appeal site.
10. I do not concur with the appellant that the approval of Sites 003 and 008 means that the appeal site must also meet the Council's sustainability criteria for building further houses in this location, nor should they necessarily set a precedent for further development. The Council's evidence indicates that both sites were determined in 2018, and that a strategic and pragmatic approach was taken in approving them. Their decision appears to have been influenced by the housing land supply situation at that time, and the inclusion of the sites as housing allocations in the emerging Darlington Local Plan.
11. The most recent five year housing land supply position statement (HLSPS), covering the period from 1 April 2020 to 31 March 2025 and based on the standard method, sets out a 15 year supply of deliverable housing land in the Borough. The Council indicate that whilst an updated HLSPS has not yet been published, the latest position as at 1 April 2021 indicates an even larger supply figure of 17 years.

² 15/01050/OUT

³ 15/00804/OUT

12. Information has been put to me relating to the recent Examination in Public of the emerging Darlington Local Plan, however there is no evidence before me regarding the sites which were discussed at the hearings including 'Elm Tree Farm'. Whilst it may well be the case that the Council's current five year housing land supply will differ against the proposed figures in the emerging plan, the plan is at such a stage where I cannot give it any significant weight in my decision. The 2020 HLSPS gives the current published supply figure which gives a comfortable margin above what would be needed to persuade me that the tilted balance would be engaged.
13. Windfall sites can provide a contribution to housing supply and this level of flexibility is recognised within the HLSPS. However, in this circumstance, in accordance with the adopted development plans, the appeal site is located outside development limits of Darlington and does not meet the exceptions of BDLP Policy E2.
14. I have considered whether the most important policies in the development plan are out of date for reasons other than five year housing land supply, including their age. I am mindful that paragraph 219 of the Framework indicates that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework.
15. In reviewing their degree of consistency with the Framework, I find that the policies are somewhat restrictive in their 'closed list' of the types of development that would be supported in the countryside. Nonetheless, they continue to serve their purpose in preventing uncontrolled urban sprawl into the countryside and broadly reflect the aims of the Framework. I have already established that the Council has a healthy housing land supply and therefore it is unnecessary to develop a greenfield site outside of the urban area for additional housing.
16. The proposed development, being located beyond the development limits, is contrary to Policies E2 and H7 of the BDLP which seek to restrict uncontrolled development in the countryside. It also conflicts with Policy CS1 of the Darlington Local Development Framework Core Strategy 2011 (CS) which gives priority to new development in accessible locations within the main urban area, and restricts it outside of development limits to that required to meet identified local needs. When read as a whole, they are broadly consistent with the Framework. These are the most important policies to which I give moderate weight, and notwithstanding the age of the plans, I do not consider them to be out-of-date and consequently the tilted balance is not triggered.

Character and Appearance

17. The appeal site comprises grassed pasture land. The site is undulating, sloping gently down towards the remains of a field hedge and overhead lines which lie broadly central within the site. It is relatively open in local views in particular from Burtree Lane. The presence of overhead power lines provide a reference point for the site in wider views, but notwithstanding these features it has an attractive open and semi-rural character. The site is typical of landscape character area 4 'Whessoe and Dene Beck' as defined in the 2015 Darlington Landscape Character Assessment.
18. The appeal site is not prominent in longer distance views, including from the nearby public right of way. This is largely due to its topography, being situated

in a dip of the valley. The site context photographs included in the submitted Landscape and Visual Impact Assessment (LVIA) indicate the extent of the site in a range of public views. It is evident from them that the proposed development would be viewed alongside and against a backdrop of the approved residential development on neighbouring Sites 003 and 008.

19. Undeveloped, the appeal site would provide a degree of visual relief to the edge of Darlington following build out of the neighbouring housing sites. Its development would undoubtedly result in further urbanisation and encroachment into open countryside. However ample open land would remain around the site and leading towards the surrounding road and public right of way network, providing visual relief within wider range views.
20. Layout, appearance, scale and landscaping are reserved for future consideration. Then, the visual effects of the dwellings including their height, bulk and design would be assessed in detail. From the submitted indicative layout plan it is evident that 150 dwellings could be comfortably accommodated within the site, and the illustrative landscape masterplan indicates that land to the edges of the appeal site would remain undeveloped with ample space for tree planting.
21. Over time, the planting could effectively screen the residential development in longer distance views and soften its impact in the street scene. The plan also shows the 'pylon corridor' to the centre of the site as an open landscaped area with trees and wetland/wildflower planting together with drainage attenuation basins. These landscaped areas would provide biodiversity as well as visual benefits. I acknowledge the layout and landscape plans are indicative only, but a condition could establish that the submitted plans provide a basis for future reserved matters submissions.
22. I conclude on this main issue that whilst there would be harm resulting from the urbanising effects on the landscape, this harm to character and appearance would not be significant and could be adequately mitigated through careful design and landscaping at reserved matters stage. Consequently I do not find conflict with CS Policy CS2 part b) which promotes high quality design which reflects the characteristics of the local area. The Policy is broadly consistent with section 12 of the Framework.

Accessibility

23. As I have previously set out, the site is located in the countryside, detached from the development limits of the town of Darlington. I noted on my site visit that whilst vehicular access to the A1(M) and towards the town centre is relatively straightforward, it is distanced from local services which could be accessed by non-motorised users. This section of Burtree Lane is a rural road devoid of footways except where it meets the frontage of a small number of adjacent dwellings. The development limit and urban boundary of the town is several minutes walk away, primarily via vegetated road verges.
24. This section of Burtree Lane is subject to the national speed limit and is a fast, curved road of restricted width. It has the appearance and nature of a rural lane until it reaches the mini-roundabout at Trevone Way. The road then takes on a more urban character with dwellings fronting it and footways to both sides. Nearby there are speed reduction features within the highway where the 30mph speed limit begins. The approved site layout plan for Site 003 indicates

- that a new roundabout would be constructed between here and the Trevone Way junction.
25. There is no dispute regarding the proposed roundabout access into the site nor the traffic levels the development would generate and I have no reason to disagree with this. The principal concerns lie with the accessibility of the site and the lack of safe links for pedestrians and cyclists (non-motorised users).
 26. The Chartered Institution of Highways and Transportation (CIHT) document 'Providing for Journeys on Foot' includes at table 4.1 suggested acceptable walking distances. The document sets out that walking distances for commuting and school of 500m are desirable, with 1km being acceptable and 2km the preferred maximum. For other services including shops and leisure facilities, 400m is desirable, 800m is acceptable, and 1.2km is the preferred maximum. Whilst accepting this is guidance and that the propensity to walk is influenced not only by distance but by the quality of the walking experience amongst other factors, it provides a useful tool for assessing the accessibility of a development.
 27. Appendix A of the Transport Assessment (TA) details walking isochrones of 1km and 2km, and the document sets out the distances of a number of services including bus stops, employment areas, schools, leisure facilities, healthcare and shops. Unfortunately, the TA does not detail which pedestrian/cycle routes were used in the calculation of the stated distances and whether they reflect existing routes, or if they assume completed routes via the approved residential developments on Sites 003 and 008.
 28. The nearest primary and secondary schools are some distance away but within the preferred maximum walking distance. Proposals for Site 008 at Berrymead Farm include a new primary school. However I note that no reserved matters application has been submitted for the site and timescales are unknown, therefore I give little weight to it. In terms of employment areas, the TA indicates that Faverdale and North Road industrial estates are around 2km away, at or above the preferred maximum walking distance. The nearest doctors surgery is indicated as over 2km away. There are very few shops within reasonable walking distance, the nearest being a small convenience store with post office facilities on North Road over 1km away. The town centre of Darlington is around 3km away.
 29. The nearest existing bus stop is on Camborne Drive, and service 3A operates relatively frequently to a range of destinations including the town centre. The completed S106 includes a contribution to extending the bus service and I acknowledge that Site 003 also provides for an extended bus route. I am satisfied that the obligation meets the tests set out in the CIL Regulations. Furthermore, there is a feasible proposal to provide bus stops next to the roundabout access into the proposed development, which would result in a shorter walk from the appeal site to access public transport services.
 30. Presently, Burtree Lane is not a safe environment for non-motorised users, and the site is distanced from local services. I also noted on my site visit that there are few cycle lanes in the wider area. In view of the above, I conclude that the appeal site is not in a suitably accessible location for non-motorised users. Whilst there are a good range of services available in the town, the vast majority are over the acceptable walking distances recommended in the CIHT document.

31. Improvements are required to the highway so that it is both safer and more attractive to non-motorised users. Without them, the majority of residents are highly likely to use the private car over any other mode of transport, contrary to social and environmental objectives of achieving sustainable development, and paragraphs 8, 92, 110 and 112 of the Framework.
32. I have considered whether the site could be made more accessible, through limiting the need to travel and offering a genuine choice of transport modes as sought by paragraph 105 of the Framework, and whether the required improvements could be feasibly delivered as part of the proposed development.
33. I acknowledge that reserved matters have been granted for Site 003, including a range of pedestrian links. The housebuilder anticipates construction to commence in the first quarter of 2022. Be that as it may, the proposed development on the opposite side of the road is of a significant scale (380 dwellings), and its phasing arrangements are not before me. Given the lack of detail and assurances on timescales for its build-out, I agree with the Council that the proposed development needs to be able to be accessed independently without the reliance on the build-out of Site 003.
34. The appeal submission includes plans for a footway on Burtree Lane up to the existing footway near to Trevone Way, together with a new speed restraint feature. The provision of such measures, as well as the extended bus service, would significantly improve accessibility for non-motorised users as well as safety of Burtree Lane. However, the local highway authority is concerned that the proposed footway is a) not wide enough; and b) could not fit within the space available within the highway without use of third party land or narrowing the existing carriageway to an unacceptable degree. Furthermore, the Council have stated a preference for a 3m wide footway, which could accommodate a shared cycle/pedestrian path.
35. Following their topographical survey, the appellant considers that a minimum footway of 1.8m in width would be achievable. This relies on the carriageway narrowing in some locations together with a traffic calming feature.
36. However Manual for Streets recommends that a 2m wide footway is the minimum width which should generally be provided, as does the Government guidance 'Inclusive Mobility'. Furthermore, the CIHT guidance 'Designing for Walking' sets out an absolute minimum of 1.8m, with 2m being the desirable minimum width and 2.6m the preferred width.
37. The aforementioned documents, and the evidence provided by the Council, all point towards a width of 1.8m being unsatisfactory. This is compounded by the road conditions where the highway is already constrained in width, and it would need to be further narrowed in places. Furthermore, the existing verges are constrained by vegetation, telegraph poles and street lighting columns. The removal/re-location of such features is unclear in the submission. A cycle lane or shared cycleway/footpath appears to be unachievable. I am unconvinced by the appellant's justification for a narrower path, which is inappropriate for a housing development of this scale in this location.
38. The imposition of a pre-occupation condition along the lines of suggested condition 12 is not a satisfactory way of dealing with the matter, given the uncertainty over whether safe footpath and cycleway links can be delivered. Additional land outside the existing highway may be needed to achieve the

required widths, potentially requiring a separate planning application as well as the relevant consents off the affected landowners.

39. In conclusion on this main issue I am not satisfied that a safe route for non-motorised users could be accommodated as part of the proposed development. Satisfactory and achievable improvements to Burtree Lane are necessary to ensure that the proposed development can be made accessible in a safe manner suitable for all users. The proposed development fails to accord with Policy E2 of the BDLP which seeks for new development to be concentrated in sustainable locations where there is actual or potential good accessibility for everybody, and Policy CS2 (d) which requires proposals to support inclusive communities by providing links to existing networks to ensure safe, convenient and attractive access for pedestrians, cyclists, public transport users and for disabled people.
40. The proposals also fail to meet Paragraphs 105 and 110 to 112 of the Framework, in particular part a) of paragraph 112 which sets out that applications for development should give priority first to pedestrians and cycle movements; part b) in failing to address the needs of people with disabilities and reduced mobility; and c) in failing to minimise the scope for conflicts between pedestrians, cyclists and vehicles.
41. BDLP Policy H7 and CS Policy CS1 are cited in the reason for refusal but I do not consider them to be of direct relevance to matters of accessibility.

Other Matters

42. A signed and completed Section 106 Agreement (S106) has been submitted, including obligations relating to various social and infrastructure contributions. These include an extension to the bus service, a sustainable transport contribution, highway improvements contribution to works elsewhere in the town, a scheme for open space maintenance and transfer, an education contribution, and a sport and recreation contribution. The S106 has been agreed by the Council and the obligations reflect the relevant consultation responses; I have no reason to disagree that it would not meet the tests set out in the CIL Regulations. However none of the obligations persuade me that the conflict with the development plan could be overridden.
43. A number of appeal decisions have been put to me. They have limited bearing on my decision given that they are for varying levels of development in different locations, and the details are not before me.
44. A number of other matters have been raised by local residents. As I am dismissing the appeal on the main issues for the reasons given above, I have not addressed these matters further.

Conclusion

45. For the reasons given above I conclude that the appeal should be dismissed.

Susan Hunt

INSPECTOR