



# Appeal Decision

Site visit made on 7 March 2024

**by H Jones BA (Hons) DipTP MRTPI**

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

**Decision date: 18 March 2024**

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**Appeal Ref: APP/N1350/W/23/3332091**

**42 Durham Road, Coatham Mundeville, Darlington DL1 3LZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Rod Farrow against the decision of Darlington Borough Council.
  - The application Ref is 22/01271/FUL.
  - The development proposed is the erection of 2 No. new dwellinghouses for self or custom build. Segregation of existing access road with new highway connection.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The Council and the appellant have been given the opportunity to comment on the revised Framework. I have had regard to the revised Framework in my decision.

## Main Issues

3. The main issues are:
  - whether the appeal site provides a suitable location for the development proposed having particular regard to the development plan's spatial strategy and the effects of the development upon the character and appearance of the area; and
  - the effects of the development upon the living conditions of the occupiers of 40 and 42 Durham Road with particular regard to privacy and noise

## Reasons

*The location of the development and character and appearance*

4. The appeal site largely comprises of grassland and is located between 40 and 42 Durham Road which are each residential properties within Coatham Mundeville. With many of its property's situated closely beside Durham Road, Coatham Mundeville has a largely linear development pattern. Although there is a variety to the scale and design of buildings within the area, most of those closest to the appeal site are bungalows or 1 ½ storey properties and incorporate a low eaves level. Therefore, they exhibit a low-slung appearance.

5. Policy SH1 of the Darlington Local Plan 2016-2036 (LP) establishes a settlement hierarchy which shapes the broad distribution of development within the local plan area. The policy sets out that areas that are not within a Development Limit are regarded as the countryside. The justification to the policy further sets out that new housing outside of Development Limits will be required to meet local and other functional needs. The appeal site is not located within a Development Limit.
6. Given this, I find that policy H3 of the LP which relates to proposals within Development Limits, is not applicable to the proposal. Even so, like policy SH1 the justification to policy H3 confirms that policies relating to development in the countryside apply to land outside of Development Limits and that this includes villages which do not have such limits defined.
7. Policy H6 of the LP sets out that in certain circumstances affordable housing will be permitted within the countryside. In order to be rightly considered as affordable, housing must be for those whose needs are not met by the market and it must meet certain definitions which are set out within the Framework. The evidence before me does not demonstrate that the houses proposed would be affordable. As a result, policy H6 is also not applicable to the development, but neither does the proposal garner any support from it.
8. Policy H7 of the LP also applies to housing within the countryside. In order to comply with this policy, the housing proposed is required to meet particular criteria. Examples include that the housing would be necessary for a rural worker or that it would be of exceptional design quality.
9. The houses proposed are designed to work towards achieving the PHI Low Energy Build Standards and seek to incorporate certain Passivhaus criteria. The energy efficiency and ecologically sustainable facets of the houses proposed are supported by those policies within the Framework which seek to increase resilience to climate change. The incorporation of the measures proposed is commendable and would achieve a design which, in these respects, is above the norm. However, it has not been shown to me that the design proposed would be so innovative or ground-breaking so as to amount to being truly outstanding or exceptional.
10. Therefore, the houses proposed would be located outside of Development Limits and within the countryside. They do not constitute a form of exceptional housing development in the countryside which policies H6 and H7 of the LP permit and so in this location, the development proposed would not accord with the development plan's spatial strategy. This conflict with the planned development distribution set out within the development plan is by itself harmful.
11. In this appeal, it is not my role to determine whether the lawful use of the appeal site is as a garden. This can only be formally determined by a lawful certificate application. Even if I were to adopt the view that the appeal site is very likely to be in lawful use as a garden it is nevertheless the case that it is largely open and free of built development. The site provides a visual break in the ribbon of buildings situated alongside Durham Road and views across it of the fields and trees beyond are available. The present condition of the site and the views of the countryside across it contributes positively to the character and appearance of the area.

12. Upon completion of the development, much of the site would become built-upon with the houses largely filling the existing gap between the properties at Nos 40 and 42. This particular part of Coatham Mundeville would become markedly more built-up, and the positive contribution which is made by the site's openness would be harmfully eroded.
13. In comparison to the single and 1 ½ storey properties adjacent, the proposed houses would have a higher eaves level. Each house would have a series of first floor level windows within their front elevations and some pronounced gable features above them. For these reasons, the proposed houses would not share the low-slung appearance of the nearest neighbouring properties. In contrast, their design would be more visually intrusive, and they would form incongruous and unsympathetic introductions to the site. This would be the result even if appropriate external materials were utilised.
14. The hedgerow which runs along the site frontage is relatively low and given the scale of the houses proposed would not provide an effective screen. Further landscaping could be undertaken, but any planting would be likely to take considerable time to mature. Therefore, landscaping would not adequately mitigate the harmful effects I have described.
15. Consequently, in addition to the conflict with the development plan's spatial strategy, an erosion of the open character of the site in this part of the countryside would take place. Coupled with the design of the houses proposed, harmful effects upon the character and appearance of the area would result.
16. In coming to these views, I have had regard to the advice of the Framework which states that rural housing should be located where it will enhance or maintain the vitality of rural communities. However, I have no compelling evidence before me of the particular contribution that this proposal would make in this regard or that there are local services which would particularly benefit from the development.
17. Consequently, the proposal would conflict with policies SH1 and H7 of the LP. It would also conflict with policy DC1 which amongst other matters requires that the design of development responds positively to local context and would complement and enhance the character of both the built and natural environment. The Council's first reason for refusal also cites policy ENV3. However, this policy seeks to protect and improve specific parts of Darlington's landscape which it has not been shown to me the appeal site forms a part of. Therefore, I find that this policy is not relevant to the harm I have identified.

#### *Living conditions*

18. Along the common boundary of No 40 and the appeal site there is a dense and high coniferous hedgerow. I have no reason to conclude that this hedgerow would not be likely to endure in the long term. Its presence would be likely to limit the views towards No 40 from the first floor master suite and rear balcony of House 2.
19. Despite this, the plans do not include sufficient detail to demonstrate to me that some overlooking of the hedgerow would not be possible. However, had I concluded that the appeal should be allowed, I am satisfied that a condition could ensure that the 2 first floor master suite windows within House 2 were obscurely glazed and the subject of a restriction on their means of opening. A

further condition could ensure that a screen be erected at this end of the rear balcony. This would prevent overlooking of No 40 taking place.

20. No hedgerow is in place which would screen the side elevation of House 1 from the windows within the flanking elevation of No 42. Even so, the same approach could be adopted whereby conditions ensure the obscuring and restricted opening of the master suite windows opposite and the erection of a balcony screen. This would ensure that House 1 would not unacceptably infringe upon the privacy of the occupiers of No 42.
21. It is part of the character of the area that the gardens of neighbouring properties are adjacent to one another. Therefore, I expect that for the occupants of one property to hear some noise coming from the plot of a neighbouring property is quite typical of the area. I further expect that the occupiers of both Nos 40 and 42 already experience this from time to time.
22. Some noise may emanate from the use of the balconies proposed to serve the 2 houses. However, I have no substantive evidence before me which demonstrates to me that this would be very different from the type of noise that would arise from the use of their gardens nor that arises from the use of gardens of existing properties nearby. I find that the proposed balconies would not be likely to give rise to any harmful increase in noise nor result in any noise that would be unusual or divergent from that which prevails in the area already.
23. Accordingly, subject to the imposition of conditions in the scenario that I had allowed the appeal, the effects of the development upon the living conditions of occupiers of Nos 40 and 42 with particular regard to privacy and noise would be acceptable. The proposal would accord with policy DC4 of the LP which requires new development to protect the amenity of building users including in regard to privacy and noise.

### **Other Matters**

24. The development would make a contribution to housing supply and would increase the choice of housing in the area. However, in providing only 2 houses this contribution would be modest.
25. I have already set out that the development's energy efficiency and ecologically sustainable facets would be commendable and this element of the design of particular merit does weigh in the proposal's favour. The appellant refers to the National Policy Statements for Energy Infrastructure (NPS). The proposal would accord with some content within the NPS which seeks to reduce energy demand and achieve an energy demand shift. However, the purposes of the NPS are principally to provide advice in respect of dedicated large-scale energy infrastructure rather than the energy efficiency credentials of a small-scale housing development. The specific content of the NPS therefore has little bearing upon my decision.
26. The appellant submits that the proposed dwellings would deliver custom/self-build homes. However, despite the appellants' stated intentions to this end, no means of securing the houses as custom/self-build homes is before me. Consequently, this limits the extent to which I can attribute any positive weight to their provision.

27. Although the appellant refers to a housing shortage in the area this is not supported by any substantive evidence. Regardless, the harmful effects of the proposal would be considerable and would outweigh the benefits of the proposal I have outlined above.
28. My attention has been drawn to the dwelling permitted at land adjacent to No 36<sup>1</sup>. Amongst other differences, the dwelling beside No 36 may not share the abovementioned facets of the appeal proposal. However, the planning application on the land adjacent to No 36 was granted when a different development plan was in force. I cannot be certain that the position on housing land supply at that time is very comparable with the present situation either. These are distinguishing factors, and moreover, I have come to my own conclusions on the appeal scheme having regard to the particular circumstances of this case. The planning permission adjacent to No 36 is therefore of very limited weight in my decision.
29. A further residential planning permission may have also been granted on land adjacent to No 8, but I have very limited detail before me on that case and so I cannot be certain that the circumstances are very similar. In any case I have considered the appeal proposal on its own merits.
30. The appellants earlier planning application<sup>2</sup> is not the subject of the appeal. The Council's handling of that case and the development plan policies which it used to assess the proposal has no bearing upon my decision on the appeal proposal.
31. The proposal may not conflict with the specific criteria within Policy H8 of the LP which relates to housing development within gardens or back land positions. Nevertheless, the proposal would still conflict with the development plan's spatial strategy, cause harm to the character and appearance of the area and this is determinative.
32. Wastewater arising from the development could result in nutrient loading effects upon the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects on the site's integrity. Given I am dismissing the appeal, there is no requirement for me to undertake this assessment. Even if I were to conclude that no such adverse effects would be caused by the development it would at most be a neutral factor in this appeal.
33. The vehicular access and parking arrangements of the development would be acceptable and no effects that would be detrimental to highway safety would result. However, these are also neutral factors that weigh neither for nor against the proposal.

## **Conclusion**

34. In my second main issue, I have identified that the effects of the development upon the living conditions of occupiers of Nos 40 and 42 would be acceptable. However, the housing proposed on the appeal site conflicts with the development plan's spatial strategy and would result in harmful effects upon the character and appearance of the area. This matter is determinative, and I conclude that the proposal conflicts with the development plan taken as a

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<sup>1</sup> Planning application reference 16/01097/FUL

<sup>2</sup> Planning application reference 21/01360/FUL

whole. Material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

*H Jones*

INSPECTOR