



Appeal Decision

Hearing Held on 29 May 2019

Site visit made on 29 May 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2019

Appeal Ref: APP/N1350/W/18/3208188

Bridge View, Middleton Road, Sadberge DL2 1RP

- 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 Mr Patrick Connors against the decision of Darlington Borough Council.
 - The application Ref 17/00848/OUT, dated 11 September 2017, was refused by notice dated 6 February 2018.
 - The development proposed is described as "To property known as Bridge View, Sadberge. Proposed dormer bungalow with 4/5 bedrooms and double garage, approximate position as shown on the location plan. Construction would be traditional with facing brickwork walls and clay pantile roof all to the approval of the planning department and building control department."
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of dormer bungalow and double garage at Bridge View, Middleton Road, Sadberge DL2 1RP in accordance with the terms of the application, Ref 17/00848/OUT, dated 11 September 2017, subject to the conditions in the attached schedule.

Procedural Matters

2. The application was submitted in outline with all matters reserved for future consideration. An indicative site plan has been submitted, which has formed part of my consideration of the appeal.
3. The description of development in the heading has been taken from the planning application form. Part E of the appeal form states that this description of development has not changed, even though a different description has been entered. This broadly reflects the description stated on the decision notice. Despite the description of development set out above, the main parties agreed at the Hearing that the appellant's appeal form better reflects the scheme that is before me and that which the Council considered. Hence, I have considered the scheme on the basis of the following description of development in my formal decision: "*Erection of dormer bungalow and double garage.*"

Main Issues

4. The main issues are: (i) whether the appeal site is a suitable location for the proposed development, having regard to its proximity to key services and public transport connections; and (ii) whether there are any material considerations that weigh in favour of the development.

Reasons

Background and approach

5. The site is located on the eastern side of Middleton Road. Hedgerows and fencing enclose the site, while the raised embankment of the A66 is to the south. Opposite the site and to the north and east is open countryside. A stable building is in the north-east corner of the site, while a driveway leads from Middleton Road into a yard area. There is a brick-built amenity building along the site's north-western boundary. A single chalet is to the rear of the site. A grassed paddock is between the chalet and the road.
6. The site has a planning history which includes multiple appeal decisions. The most recent granted planning permission for '*the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one gypsy family with two caravans, including laying of hardstanding and erection of utility building*' in August 2013¹ ('the 2013 appeal decision'). This planning permission was granted based on the specific circumstances presented which included the need for gypsy and traveller pitches in the Borough.
7. Evidence submitted as part of the appeal explains that the proposed dwelling would be occupied by the current occupants of the site, the appellant and his family. There is no dispute in the case presented to me by the main parties about the gypsy status of the appellant having regard to the definition set out in Planning Policy for Traveller Sites (PPTS). From the evidence before me, I see no reason to disagree with the main parties. That said, the PPTS applies to development proposals for traveller sites as it is designed to address the specific accommodation needs of travellers. It does not apply to proposals for new houses. Consequently, even though the respective schemes relate to the same site, there are distinct differences in how each case should be considered. Given the type of accommodation proposed, I have determined the appeal having regard to the relevant policies in the development plan and the National Planning Policy Framework (the Framework).

Planning policy

8. Among other documents, the Council's reason for refusing planning permission refers to the Interim Planning Position Statement (IPPS). At the Hearing, the Council confirmed that section 7 and Table 3 were the relevant parts of the IPPS that I should have regard to, and that the IPPS does not form part of the development plan. The Council have used the IPPS as guidance pending the adoption of the Darlington Borough Draft Local Plan June 2018 (emerging plan). Whilst the Council is working towards submitting the emerging plan for Examination, and it is their intention for emerging plan Policy H7 to replace section 7 and Table 3 of the IPPS, this is still some time away as they have yet to issue their preferred options.
9. In addition to IPPS, which is a relevant consideration in this case, the Council rely upon emerging plan policies H3, H7 and H9. Even if I were to accept the Council's view that these policies are consistent with the Framework, the current stage of the emerging plan means that it is unclear whether there will or will not be any objections to these policies. Thus, for the time being, they carry little weight. These reasons and weight also apply to the emerging Policies Map.

¹ Appeal Decision Ref: APP/N1350/A/13/2193221

Location

10. The site is outside the defined settlement limits for Sadberge and is therefore within the open countryside. Saved Policy E2 of The Borough of Darlington Local Plan (Local Plan) and Policy CS1 of the Darlington Local Development Framework Core Strategy (CS) seek to concentrate new development within the development limits, but they do not prohibit development outside of them either. CS Policy CS1 explains that for sites outside the limits to development of the main urban area and the villages, development will be limited to that required to meet identified rural needs. CS Policy CS10 seeks to direct and deliver new housing development across the borough in accordance with the locational strategy in CS Policy CS1.
11. The proposal is not for agricultural or forestry operations, having regard to saved Local Plan Policy E2. However, the appeal scheme is small-scale and the appellant says that it would be beneficial to the needs of rural communities. Saved Local Plan Policy H7 deals with housing in the countryside and outlines instances when new residential development will be permitted. Many of these broadly reflect the circumstances listed in Framework paragraph 79. The proposal would not accord with any of the criteria listed in saved Local Plan Policy H7, but the policy is not consistent with the Framework as it is more restrictive than Framework paragraph 79 which requires consideration of whether the development of a dwelling in the countryside would or would not be isolated. The term 'isolated' is not defined by the Framework, or used by policies in the Local Plan or the CS. The Courts² have held that isolated should be given its ordinary meaning: 'far away from other places, buildings or people; remote'. Thus, I attach limited weight to saved Local Plan Policy H7. While 'isolated' is used in emerging plan Policy H7 this policy carries little weight.
12. Middleton Road has a footpath along its western side. The road is lit and passes underneath the A66 to the south. A slip road provides access to the west-bound lane of the A66. The footpath leads from the site into the centre of Sadberge where there are few services and community facilities³ apart from two public houses, a church, a village hall and a limited bus service. The proposal would help maintain the vitality of these and the rural community which would, in a limited manner, be beneficial to the rural economy. The site is around 300 metres from the nearest bus stop on Middleton Road. Service 20 runs from this stop, with three journeys to Darlington every Monday. Monies from a section 106 agreement relating to a scheme⁴ for 25 no. dwellings to the north of the site were secured towards service 20. The Council explained to me that they are currently considering an application to discharge the planning conditions imposed on this planning permission. While the appellant suggested that development has commenced, there is no evidence that this is the case. In any event, the planning permission is extant up until 15 July 2019.
13. There are a greater range of facilities and services at Whinfield, which is around two miles from the site to the west. Here, there is a supermarket, a primary school and a doctor's surgery. I understand that the appellant's four children attend the primary school, with private transport used to drop off and pick up the children. The children will either go onto secondary school or be

² Braintree DC v SSCLG, Greyread Ltd and Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610

³ Table 3, IPPS

⁴ Council Ref: 17/00358/FUL

home schooled. I was informed that there is a school bus service. This provides an alternative mode of travel to and from school. I note that the appellant and his family are happy living in the area and wish to remain here as it also allows them to keep their horses at the site. There is no suggestion that the family have not integrated into the local community.

14. While the site is outside of the village envelope, it is adjacent to Sadberge and despite the limited range of facilities and services nearby, there are a greater range of facilities and services not too far away. The A66 provides direct access to Darlington Town Centre. The site would have appropriate access and is in a fairly sustainable location for schools, shops, employment opportunities and other local facilities and services. This view is consistent with that expressed by the Council in their consideration of the scheme for 25 no. dwellings next to the site, which is also outside the development limits. I therefore consider that the site is not far away from other places, buildings or people; remote. As the proposal would not result in the creation of a new isolated dwelling in the countryside it is not necessary for me to consider whether any of the circumstances listed in Framework paragraph 79 apply. Notwithstanding this, the appellant accepted at the Hearing that saved Local Plan Policy H10 does not apply to the appeal scheme as it is not affordable housing development.
15. Sadberge is characterised by a variety of building forms and styles. Built form outside of the development limits alongside the road broadly reflects this variety, albeit development is set within a more spacious rural context next to open fields. Details proposed as part of any reserved matters scheme could, together with a planning condition to secure details of materials, ensure that the proposed dwelling is of a suitable design for the site and the area.
16. The proposal creates tension with the Council's locational strategy for new housing development. Although saved Local Plan Policy H7 carries limited weight, I conclude that the proposal would not accord with this policy. However, the proposal would use a previously developed site and I conclude that this conflict is outweighed by the scheme's compliance with CS policies CS1, CS2, CS10, and CS14, saved Local Plan Policy E2, the IPPS and Framework paragraph 79. Jointly, these seek, among other things, to: avoid the development of new isolated homes in the countryside; and ensure that sites have appropriate access and are in a sustainable location for schools, shops, employment opportunities and other facilities and services.

Other considerations

17. Planning policies must account for different groups in the community, including travellers. However, a five-year supply of deliverable sites for travellers as defined by the PPTS should be assessed separately, in line with the policy in the PPTS. I heard evidence at the Hearing about the pitches identified in Table 2 of the Darlington Borough Council Gypsy and Traveller Accommodation Assessment Update 2017 and whether they satisfy the definition of 'deliverable', and form part of the Council's five-year supply. The Council disputed the appellant's point, but the evidence is inconclusive either way.
18. The proposal would relate to an existing traveller site with planning permission. Thus, the PPTS in this regard, is a relevant consideration. The appellant says that the proposal would not change the number of gypsy and traveller pitches in the Borough. The appellant and his family intend to live in the proposed dwelling, and their status has been accepted. To maintain the status quo, a planning condition restricting the occupation of the site to gypsies and

travellers is suggested by the appellant.

19. Even though such a condition was imposed on the 2013 appeal decision, the scheme before me seeks planning permission for a dormer bungalow and not a traveller site. Thus, imposing an occupancy condition would not be 'relevant to the development permitted'. Also, it would not be 'reasonable' to tie the bungalow's occupation to gypsies and travellers as many have an aversion to living in bricks and mortar accommodation. For the site to continue to meet the needs of travellers as defined in the PPTS the bungalow would have to be removed and the site restored to a site for caravans after the appellant and his family ceased living in the accommodation. This would be unreasonable. Even though there is no requirement for the appellant and his family to live in a caravan provided they maintain their nomadic way of life, the proposed condition would not satisfy the tests set out in Framework paragraph 55. Given that planning permission runs with the land, the proposed dwelling could, aside to the appellant's intentions, potentially be occupied by anyone.
20. In short, the appellant's points about development plan policies being out-of-date insofar as addressing the housing needs of gypsies and travellers who fall outside of the PPTS definition; and a five-year supply of deliverable sites for travellers do not matter as the proposal is for housing irrespective of who the occupants maybe. The proposal would result in the loss of a single pitch in the Borough. Part a) of emerging plan Policy H9 seeks to safeguard existing large gypsy and traveller sites. Whether the distinction between large sites and other sites remains once the emerging plan is adopted remains to be seen, but the proposal would contradict the thrust of CS Policy CS13 and emerging plan Policy H9 which seek to address the accommodation needs of gypsy and travellers. Thus, the loss of the existing pitch weighs against the proposal.
21. Despite my findings about deliverable traveller sites, there is no dispute between the main parties that the Council can demonstrate a five-year supply of deliverable housing sites concerning other housing types and tenures.
22. The family currently all live within the chalet on the site. The appellant explained to me that: two of his son's share a bedroom; his youngest son shares his mother and father's bed; and his daughter sleeps in the living room which is converted each night into her bedroom. Due to issues of damp, the family use a shower separate to the chalet. These arrangements are not ideal, but some of the issues could be addressed by replacing the existing 12-year-old unit. However, the lack of separate bedrooms for the appellant's sons and daughter will become a more pressing issue in years to come. A well-insulated dwelling could provide an improved living environment for the family given the site's location near to the A66. The Council did not dispute these matters, and whilst they would go some way to improving the family's living arrangements in the context of this case, they carry very little weight given that a planning condition imposed on a planning permission for the erection of a permanent building will scarcely ever be justified based solely on the grounds of an individual's personal circumstances. The alternative scenario presented by the appellant if I were to dismiss the appeal would be to seek planning permission for another mobile home which could have a greater effect on the character and appearance of the area compared to a well-designed dwelling.

Conditions

23. I have had regard to the Council's list of suggested planning conditions, and the comments provided by the appellant and the Council at the Hearing. After

the Hearing, the appellant provided their written agreement to the pre-commencement condition concerning materials, which is necessary in the interests of the character and appearance of the area.

24. A plans condition is necessary in the interests of certainty. As the main parties agreed at the Hearing, a specific condition about boundary treatments or other means of enclosure is not necessary. Instead, I have imposed an amended version of the reserved matters condition so that such details are provided with the reserved matters application. Given the site's location near to the A66, I have imposed a condition, in the interests of the occupants living conditions, to secure details of the glazing specification and ventilation system to be used.
25. A condition restricting the occupation of the site to gypsies and travellers would not satisfy the tests of Framework paragraph 55 for the reasons stated earlier. Having regard to the Planning Practice Guidance⁵, there is no justification for the Council's suggested blanket removal of permitted development rights. I do not agree with the Council's view expressed at the Hearing that a restriction of Classes A, B and C amount to the exceptional circumstances necessary to justify such a condition as despite the site's location, such restrictions are not needed to make the development acceptable in planning terms.

Planning Balance and Conclusion

26. In accordance with s38(6) of the Planning and Compulsory Purchase Act 2004 development which conflicts with the development plan should be refused unless material considerations indicate otherwise. The proposal would be in the open countryside, and conflict would arise with saved Local Plan Policy H7. However, this policy carries limited weight for the reasons explained. The site would be adjacent to Sadberge, not isolated and the proposed bungalow would make use of a previously developed site that benefits from planning permission as a residential caravan site for one gypsy family with two caravans. As such, the proposal accords with CS policies CS1, CS2, CS10, and CS14, saved Local Plan Policy E2, the IPPS and Framework paragraph 79.
27. The proposal would result in the loss of an existing traveller pitch which weighs against the scheme. But, on the other hand, the proposal would contribute to the supply of housing in the Borough and help the Council maintain a five-year supply. The proposal would also help maintain the vitality of the rural community and offer limited benefits to the rural economy. There is also no reason why the proposed dwelling could not be suitably designed to respond to the character and appearance of the area. Overall, this case is finely balanced, but the social, economic and environmental benefits associated with the proposed development lead me to the conclusion that these outweigh the conflict with the development plan.

28. For the reasons set out above, I conclude that the appeal should be allowed.

Andrew McGlone

INSPECTOR

⁵ Planning Practice Guidance, Paragraph: 017 Reference ID: 21a-017-20140306

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping (including details of any walls, fencing or other means of enclosure and when they will be erected), layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved, or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plan: site location plan 1:500 and site location plan 1:1250.
- 4) Details including samples of the external materials of the dwelling hereby permitted to be used in the carrying out of this permission shall be submitted to, and approved by, the Local Planning Authority in writing prior to the commencement of the development. The development shall be carried out in accordance with the approved details.
- 5) Prior to the first occupation of the dwelling hereby permitted full details of the glazing specification and ventilation system to be used in the dwelling hereby permitted shall be submitted to and approved by the Local Planning Authority. The approved details shall comply with the noise amelioration measures set out in the LA Environmental Noise Assessment Report No. PC/BV/001.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Philip Brown
Patrick Connors

Philip Brown Associates
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jochen Werres
Emma Williams

Darlington Borough Council
Darlington Borough Council

INTERESTED PERSONS:

Councillor Brian Jones

Darlington Borough Council

DOCUMENTS

- 1 Approved Site Layout Plan relating to the 2013 appeal decision
- 2 Attendance sheet