
Appeal Decision

Site visit made on 28 January 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Appeal Ref: APP/N1350/W/19/3240898

Land east of Middleton Lane, Middleton Lane, Middleton St George 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 Enterpen Limited, SJS Potts Limited and Wooler Holdings Limited against the decision of Darlington Borough Council.
 - The application Ref: 18/01108/FUL, dated 13 November 2018, was refused by notice dated 24 September 2019.
 - The development proposed is the erection of 55 dwellings, including 12 affordable.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant submitted a Landscape and Biodiversity Strategy Plan with the appeal submission, in response to the Council's concerns on biodiversity grounds. As the Council and interested parties have had the opportunity to comment on this document during the appeal process, I have considered it in my decision.

Main Issues

3. The main issues are whether the proposal would (i) be in a suitable location for housing with regard to the effect on the character and appearance of the area; (ii) preserve or enhance the character or appearance of the Middleton One Row Conservation Area; (iii) the effect on highway safety; (iv) the effect on the living conditions of the occupiers of 8 Pinetree Grove (No 8) by way of outlook and light, and on the future occupiers of the proposal; and (v) biodiversity considerations.

Reasons

Character and Appearance

4. The appeal site consists of an arable field which is rectangular in shape. The boundaries are largely defined by hedgerows, with occasional trees. The site forms a long frontage on to Middleton Lane, with areas of housing found on either side. To the rear, there is a further field and the open countryside stretches beyond. Opposite, there are a small number of dwellings and more open land.

5. In broad terms, the settlement of Middleton St George is found to the north of the site, with Middleton One Row found to the south. Middleton St George is centred around a number of shops and services that lie well north of the site, whilst Middleton One Row is focussed on 'The Front', which is some distance to the south. Due to its location, the site lies in between the two settlements.
6. The site lies outside of development limits under the Borough of Darlington Local Plan (1997) (LP) and so for the purposes of the LP it is in the countryside. Saved Policy E2 states that most new development will for the plan period be located inside the development limits defined on the Proposals Map. The supporting text goes on to say that the Council has defined development limits, within which most new development will be located, with the intention of maintaining these well-defined boundaries and safeguarding the character and appearance of the countryside.
7. Saved Policy H7 sets out where new housing development will be permitted in the countryside. The proposal does not conform to the types of residential development that are listed in the policy.
8. Policy CS1 of the Darlington Local Development Framework Core Strategy (2011) (CS) supports development within the limits of the larger villages, and names Middleton St George. Outside of the limits of villages, development will be limited to that required to meet identified rural needs. Whilst the CS Key Diagram shows Middleton St George and Middleton One Row as one larger village, the CS confirms that the purpose of the Key Diagram is to illustrate the broad locations to which policies refer. It does not alter that development proposals need to be considered against Policy CS1.
9. When the site's largely undeveloped and agricultural form is considered with its proximity to the field to the rear and the open land opposite, its character is appreciably informed by the countryside. This is further evidenced by the limited amount of development there is directly opposite the site. In contrast, the proposal would represent a marked incursion of built development onto the site relating to the 55 proposed dwellings and the associated infrastructure. As a consequence, the site would retain little of its open countryside qualities.
10. Moreover, the distinction between Middleton St George and Middleton One Row would largely be lost with the 'infill' of development that would result. On the same side of the road as the site, there would be a continual pattern of built development that, in effect, would cause the two settlements to merge because there is no other open land of any note. The looser pattern of development there is opposite the site would not be sufficient to keep the settlements separate.
11. The appellant has suggested a number of other alternate ways of defining the two settlements, or whether they should be seen as one. However, the appropriate means of establishing this is by how the site physically relates to its surroundings. As the site contributes to keeping the settlements distinct, it contributes favourably to their separate character. There is also not compelling evidence that it has been anticipated that such land along Middleton Lane is to be developed, in particular when the development plan policies are considered. Nor can this be inferred from the layout of the development on St. Margaret's Close, which adjoins the site.

12. The approved housing site¹ that I have been referred to which is found to the north west of the site conforms to a greater degree to the settlement pattern, as it lies opposite to what is a more significant level of development. It performs a lesser role in keeping the settlements separate. I am satisfied that the site circumstances are sufficiently different.
13. I conclude that the proposal would not be in a suitable location for housing with regard to the effect on the character and appearance of the area. Character and appearance underpins Saved Policies E2 and H7 and Policy CS1, as regards the protection of the countryside and the distinct character of settlements. It would not comply with Saved Policy E2 and Policy CS1 in this regard, as well as with the Saved Policy H7 for the reason that I have set out.
14. The weight to be given to the development plan policies depends on their consistency with the National Planning Policy Framework (Framework). Policies should not be treated as out of date simply because of their age or because the development plan is time expired. Both parties have referred to a number of appeal decisions which support their position on the weight these policies should attract, which I have considered in my deliberations.
15. In respect of Saved Policy E2, the Council has set out that the limits were drawn to protect the character and appearance of the countryside. This position is broadly consistent with the Framework with regard to recognising the intrinsic character and beauty of the countryside and, as such, the proposal would not comply with paragraph 170 of the Framework in this respect. Policy CS1, whilst focussing development on main settlements, does not seek a moratorium on development beyond limits but rather limits it to that meeting rural needs. This is consistent with the Framework which seeks sustainable development in rural areas. Both these policies attract significant weight in my decision.
16. The position in respect of Saved Policy H7 is different. The Framework does not take such a restrictive approach as regards the types of residential development that are permitted in the countryside. As such, the conflict with the policy attracts limited weight in my decision.

Conservation Area

17. The site lies within the Middleton One Row Conservation Area. The Council's Character Appraisal (2010) describes the special interest of the conservation area and states that it is considered to have high quality, intact rural qualities. Greenspace is identified as one of its key features. These also play a role in its landscape setting, in particular with the countryside surroundings of the conservation area.
18. The function the site performs in this respect is evident as a key feature of greenspace along Middleton Lane. The site allows the countryside to permeate in with its largely undeveloped agricultural appearance, along with the associated hedgerows and trees. Hence, it contributes pleasingly to the rural qualities of the conservation area and this is where it contributes to the significance.
19. The built elements of the proposal would largely remove the site's greenspace characteristic and detract from its contribution to the significance. Where there

¹ Council ref: 16/00972/FUL

would still be open spaces on the site, they would be ancillary features to the main housing use and would have limited rural qualities. Views through the site of the countryside would be filtered by the built form of the dwellings, even with the use of planting and the intention to create a 'village green feel'. The coalescence of development that would result would unacceptably alter the character. Such effects would be more than localised with the harm to the conservation area that would result.

20. Middleton Lane clearly has a distinctive character from 'The Front', in relation to the buildings found in that part of the conservation area and the views afforded southwards. The Character Appraisal is, however, clear that both areas have significant merit as regards their contribution to the conservation area. To consider the site otherwise would be to underplay its historical significance as greenspace and with the visual link to the countryside. Its inclusion within the conservation area is justified.
21. Ribbon development in the part of the conservation area where the site is found is still fairly intermittent with the open spaces that remain. Whether or not this may have developed into more of a character attribute, dependant on historical events, is of limited relevance as this does not reflect the existing situation. The proposal would, in any event, extend well back into the site and would be more akin to the modern housing developments found in its vicinity, rather than the built form which is in the conservation area. Nor is the layout and design of the proposed dwellings themselves reflective of the villa-like dwellings that are much in evidence, and it is not apparent how the design rationale relates to the particular conservation area qualities and its sense of place.
22. The statutory duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is of considerable weight and importance. Having regard to the above matters, I conclude that the proposal would fail to preserve or enhance the character or appearance of the conservation area. This weighs considerably against the proposal.
23. It would also not comply in this regard with Policies CS2 and CS14 of the CS where they concern protecting, enhancing and promoting the quality and integrity of Darlington's distinctive designated national or nationally significant built heritage, and high quality design.
24. The proposal does not accord with what the Character Appraisal considers are the components that are especially important and contribute most to the conservation area character, in order to manage change and guide new development. Nor would it comply with the Revised Design of New Development Supplementary Planning Document (2011) (SPD) which states that development in a conservation area should be guided by its character appraisal, as well as the guidance it provides on the quality of new development.
25. The proposal would also not comply with the Framework where it states that heritage assets should be conserved in a manner appropriate to their significance, and the desirability of sustaining and enhancing their significance. For the reasons set out above, I find this is a case where 'substantial harm' would arise, under the Framework.

Highway Safety

26. The matters of dispute between the appellant and the Council on highway safety relate to the proposed internal layout. The Council's Highways Officer sets out a number of detailed concerns in relation to carriageway and junction spacing, the parking provision and traffic calming. The appellant does not appear to dispute the need to address these points, but considers that they could be overcome through further design work.
27. However, such an amended scheme is not before me and so I cannot be satisfied with any great degree of confidence that such issues can be addressed to demonstrate that undue highway safety concerns would not arise. I would also have to consider if the changes to the layout may have a bearing on other matters that are for my consideration. Therefore, even if I was minded to allow the appeal, this is not a matter that could be addressed through the imposition of a planning condition. I acknowledge that the Council did not object to the principle of the development in highway terms, but this was on the premise of an acceptable layout being submitted.
28. In respect of where off-site highway works would be needed, the Highway Authority has other legislative means to deal with this and so this should not further impact on what is for my consideration. Nevertheless, this does not address the concerns that I have set out.
29. I conclude that the proposal would have an unacceptable effect on highway safety. As such, it would not comply with Policy CS19 of the CS where this concerns making the best use of and improving transport infrastructure and with the Framework where it states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, amongst other considerations.

Living Conditions

30. No 8 abuts the north-east corner of the site. The dwellinghouse is orientated towards Pinetree Grove. Its side elevation faces towards the boundary of the site, and contains ground and first floor openings. The land up to the boundary is a garden area and contains an outbuilding. The garden extends around the rear of the property. Views are fairly unobstructed from the site, albeit there are some trees close to the boundary.
31. The distance between the nearest proposed dwelling (Plot 43) and No 8 would be less than the minimum acceptable distances in the SPD, and the proposed dwelling would be around 4 metres off the boundary with No 8. Notwithstanding this, the SPD also acknowledges there is a need to analyse the site's context and its local character. In this regard, it is relevant to consider that it is the side of No 8 that faces the site. With the distance there would be between, it would not unduly impact on light levels or the outlook to the windows of that property, even if they relate to a habitable room. Likewise, whilst the proposed dwelling would be noticeable, the enjoyment of the garden area would also not be unduly impacted.
32. In relation to the future occupiers of the proposal, the Planning Officer Report raises similar issues concerning the relationship between Plots 43 and 42. Again, as the proposed dwelling on Plot 42 would be side on to Plot 43, this would not unduly impact on the living conditions of the occupiers of Plot 43 on

what would be a comparatively large plot. With the proposed layout, the effect on the living conditions of the future occupiers of the other plots would also not raise undue concerns.

33. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of No 8 by way of outlook and light, as well as on the future occupiers of the proposal. Accordingly, it would comply in this regard with Policy CS2 and, whilst it would not technically comply with the separation distances, it would in overall terms accord with the SPD as far as its design would lead to reasonable living conditions.

Biodiversity

34. The dominant habitat on the site is of an arable nature. The Council's Ecologist considered that whilst this is of a low conservation value, it still has a biodiversity value and that the losses had not been accounted for within the design of the proposal. The Ecologist suggested a broad species rich grassland corridor along the eastern boundary, hedgerow tree planting and that the open space along the western boundary should ideally be species rich grassland.
35. To that end, the Landscape and Biodiversity Strategy Plan broadly proposes those biodiversity enhancements, as well as native planting within the site and along the boundaries, and wildlife friendly gardens, amongst other measures. The Council's Ecologist went on to state that a simple principles document would be sufficient at that stage. The Landscape and Biodiversity Strategy Plan now performs that function. The proposal would, thus, not result in a net overall loss of biodiversity and would have the potential to strengthen biodiversity and adequately demonstrates mitigation.
36. I conclude that the effect on biodiversity interests would not be unacceptable. Hence, it would comply with Policy CS15 of the CS where it seeks to ensure that new development would not result in any net loss of existing biodiversity value by protecting and enhancing the priority habitats, biodiversity features and the geological network through the design of new development, including public and private spaces and landscaping, amongst other considerations.
37. It would also comply with paragraphs 170 and 175 of the Framework in this regard, where they concern minimising impacts on and providing net gains for biodiversity, and avoiding significant harm to biodiversity resulting from a development.

Planning Balance

38. Where a proposal would lead to substantial harm to a designated heritage asset, paragraph 195 of the Framework sets out that local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm. The alternative criteria that are set out in paragraph 195 do not apply in this case.
39. The proposal would make a contribution towards the Government's objective of significantly boosting the supply of homes and it would provide for a housing mix. There would also be economic benefits during construction, and with the spend of the future occupiers and through receipts that the Council would receive. Public open space would be provided on-site. The proposal would also support local and community services, and it would be in an accessible location

that would encourage the use of travel modes other than the car. Biodiversity gain is also proposed.

40. It is also intended that 22% of the proposed dwellings would be affordable housing. Contributions would also be made to a local school and sports pitch provision. The potential for these to be benefits is tempered somewhat because I do not have an effective mechanism before me for their delivery in the absence of an executed planning obligation.
41. I am mindful that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Overall, the public benefits would be on a moderate scale and would not outweigh the substantial harm to the designated heritage asset, under the Framework.
42. The proposal would also not accord with the presumption in favour of sustainable development, as is set out in paragraph 11 of the Framework, because the application of policies in the Framework that protect areas or assets of particular importance, related to designated heritage assets, namely the conservation area, provides a clear reason for refusing the development proposed.
43. In the broader planning balance, I reach a similar overall conclusion. There would be additional harm by way of the effect on character and appearance and highway safety. Matters in relation to comparisons with a previous refusal on the site and with the approved housing site to the north-west has a limited bearing, as each proposal is to be determined on its own merits. That the proposal would not be unacceptable by way of living conditions and biodiversity, and in other respects, attracts neutral weight. I have taken into account the relevant matters in relation to the economic, social and environmental objectives of the Framework, as set out above, notwithstanding these are not criteria against which every decision can or should be judged. The harm that would arise would not be outweighed by the benefits.

Conclusion

44. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR