
Appeal Decision

Site visit made on 9 February 2016

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 8 March 2016

Appeal Ref: APP/H0738/W/15/3136587

Land south of Cayton Drive, Thornaby TS17 0HD.

- 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 Mandale Construction North Ltd against the decision of Stockton-on-Tees Borough Council.
 - The application Ref: 15/1466/OUT, dated 16 June 2015, was refused by notice dated 28 September 2015.
 - The development proposed is described as an "outline planning application (all matters reserved) for residential development of up to 45 dwellings."
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Preliminary Matter

1. As noted above the application is made in outline with all matters reserved. It is not disputed that the land is located within the settlement limits of Thornaby as identified in the development plan. The Council accepts that it cannot demonstrate a 5 year supply of deliverable housing land.
2. Reference has been made by third parties to the 'Green Wedge' which is said to exist in this locality. However, I have taken account of the judgement in *Tiviot*¹ that any Green Wedge annotation in this locality fell away with the adoption of the Core Strategy.

Decision

3. The appeal is allowed and outline planning permission is granted for residential development of up to 45 dwellings at Land south of Cayton Drive, Thornaby TS17 0HD in accordance with the terms of the application, Ref: 15/1466/OUT, dated 16 June 2015, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

4. An application for costs was made by Mandale Construction North Ltd against Stockton-on-Tees Borough Council. This application is the subject of a separate decision.

Main Issue

5. The main issue in the appeal is whether, in light of the absence of a deliverable 5 year housing land supply, there are any material considerations which significantly and demonstrably outweigh the benefits of providing housing, with

¹ Tiviot Way Investments Ltd v SoS for CLG and Stockton-on-Tees Borough Council, July 2014

particular reference to the character and appearance of the area and the amenities enjoyed by local residents.

Reasons

6. The main issue stems from 2 policy strands cited by the Council in the refusal notice. These are Core Strategy Policy CS3 subsection 8, and saved Local Plan Policy HO3 (iv) and (v). The Council is concerned that the development would be harmful to the character and appearance of the locality and adversely affect the amenity of adjacent land users.
7. I carried out an extensive site visit, both within the site and widely within the surrounding area. It is clear to me that the site, which is an uncultivated field at present, is very well contained by existing features. To the north and west is residential development. To the east, beyond the boundary vegetation, is a public highway alongside which is urban development of a looser form. The southern boundary is heavily wooded to a significant degree. When on the site this imparts a self contained character to the land.
8. From outside the site significant views into it are mainly limited to those from private dwellings which share its boundaries. There are also narrow views through the potential access points at Cayton Drive and Middleton Avenue, and heavily filtered glimpses from the northernmost footpath which follows Tees Heritage Park to the south.
9. Such is the degree of screening offered by the existing woodland to the south that the impact on the character of the area, particularly the Tees Heritage Park, would be minimal. From within the Park it would be difficult to discern any development on the site other than very limited opportunities to see dwellings through the woodland belt from the nearest footpath. Even those opportunities would be reduced further when the trees are in leaf. The site itself has no particular merit and no public access. It is relatively flat and featureless and contributes little to the wider character of the Park to the south. In terms of the character of the locality its loss would not be materially harmful. Because of its enclosure the same applies to the impact on visual amenity. The field would be lost to the immediate neighbours as an open view, but in the wider area there would be no perceptible impact on visual amenity. The users of the Tees Heritage Park would be sensitive to any changes on the appeal site, but the degree of change in this case would be barely noticed because of intervening woodland. Hence any visual impact imparted to the users of the Park would be very small.
10. I understand the concerns of those people who would lose the outlook into what is at present an open field. But the loss of a view is not a matter which can be afforded weight in land use planning terms so long as the impact of development does not make an existing dwelling an unacceptable place to live. There are no details of development before me, and I have regard to the fact that the gardens backing onto the site are relatively short. Even so I am satisfied that it would be possible to design and locate dwellings which would not unacceptably detract from the living conditions of neighbouring occupants. In other words I consider that the existing houses to north, west and east would still provide attractive places to live.
11. Taking these matters together I am therefore satisfied that the proposed development would not be unacceptably harmful to the character and

appearance of the area or to the amenity of adjoining land users. There is therefore no conflict with development plan Policies CS3 subsection 8 or saved Local Plan Policy HO3 (iv) and (v).

12. I am aware that the Council is preparing the Stockton-on-Tees Regeneration and Environment Local Plan. This is at publication draft stage and as yet carries limited weight. In any event, whilst it seeks to promote green infrastructure in the form of primary and secondary corridors. There is no suggestion that the appeal site would lie within such a corridor, though the Tees Heritage Park would. This emerging Local Plan therefore has little bearing on the relevant considerations in this appeal.

Other Matters

13. There are many representations which express concern in relation to a number of matters. Many of them refer to the site being within a Green Wedge, which I understand was previously the case. As I have indicated above that is not now the situation, and the Council does not contest the appeal on that basis. I note that the review of Green Wedges in December 2014 concluded that site is not easily viewed and that its development would not undermine the separation of built up areas or feeling of openness, subject to satisfactory siting and design. The Green Wedge arguments therefore carry little weight here. The Core Strategy gives an indication of the extent of the Green Wedge, but it clearly excludes the appeal site. Detailed boundaries have not yet been drawn up.
14. There is nothing before me which suggests that the site supports any ecological features or biodiversity of note, or that development would be harmful to these resources in the locality. The concerns expressed in relation to traffic and highway safety are not shared by the highway authority and there is no substantive evidence that drainage of the site would be problematic.
15. I have considered all other representations made but I have not seen or read anything which leads me to the conclusion that there are other matters which have a material bearing on the case.

The Overall Balance

16. I start from the position that the Council acknowledges that it cannot demonstrate a 5 year supply of deliverable housing sites. This means that housing supply policies in the development plan must be considered to be out of date by reference to paragraph 49 of the National Planning Policy Framework (NPPF). The provision of housing on the appeal site, with a proportion of affordable housing, is a significant and important benefit of the scheme.
17. The Council accepts that this is a sustainable location given the surrounding facilities. In addition, with reference to the NPPF, I accept that the development would meet the 3 dimensions of sustainable development. There would clearly be economic benefit from the development, including support for local facilities. Housing, including affordable housing, would be of social benefit. Environmental impact, as noted above, would not be unacceptable. Indeed in my judgement it would be minimal.
18. Hence paragraph 14 of the NPPF is engaged. This indicates that where development plan policies are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and

demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. No such adverse impacts have been demonstrated. In my judgement the benefits of providing housing far exceed any of the concerns expressed. The development is therefore acceptable.

Conditions and Obligation

19. The Council has suggested a number of conditions in the event of planning permission being granted. As this is an outline application the standard conditions for such a permission would be appropriate. There are also some specific conditions relating to the site which would also be reasonable and necessary in this case in order to ensure that development satisfactorily addresses its immediate environment. These deal with matters of sustainable construction, surface water drainage, waste disposal, construction and contamination, ecology and biodiversity. I have amended the wording where necessary for precision and to meet the tests set out in Planning Practice Guidance.
20. I have also been provided with a signed and dated S106 Obligation in the form of an agreement between the Appellant and the Council, with a Deed of Variation to correct an error in the original agreement. This deals with a number of matters:
- A contribution to towards the provision of open space by the extension of Thornaby Allotments and/or the multi use games area at Harold Wilson Playing Fields;
 - A highways contribution to be used for the installation of traffic calming on Middleton Avenue;
 - Education contributions to address any shortfall in primary and secondary school provision resulting from the proposal;
 - Affordable Housing provision on site.
21. These matters have been justified by reference to the impact of the development and its population on the facilities and infrastructure available in the local area. They are all directly related to the development, necessary to make the development acceptable, and fair and reasonably related to the development. As such the S106 agreement complies with the tests set out in the Community Infrastructure Regulations and I am able to take it into account in determining this appeal.

Overall Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

Philip Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority demonstrating sustainable building techniques and/or the provision of on site renewable energy to be included in the development. The approved scheme shall be implemented and thereafter retained.
- 5) No development shall take place until a scheme of surface water drainage and management has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the timing and phasing arrangements within the development, shall be implemented as approved, and shall be thereafter retained as approved.
- 6) No development or preparatory work at the site shall be undertaken until a schedule detailing the timing of works, including construction, has been submitted to and approved in writing by the local planning authority. The schedule shall detail any works to be undertaken that might affect wildlife in the area, the extent of the works and time period when the works would be undertaken, together with details of proposed mitigation. All works shall be carried out in accordance with the approved schedule.
- 7) Bat boxes shall be installed at an agreed time at 4 positions within the site as detailed within the ecological mitigation statement submitted as part of the application, in accordance with a scheme to be submitted to and approved in writing by the local planning authority.
- 8) No development or preparatory work at the site shall be undertaken until a scheme for the protection of existing trees and shrubs on site which are to be retained has been submitted to and approved in writing by the local planning authority. The scheme shall include details of protective fences and their location, areas of material storage on site, and root protection zones. The approved scheme shall be implemented prior to construction works commencing and shall be retained throughout the period of construction.
- 9) Construction works associated with the development hereby permitted shall be carried out in accordance with a Construction Management Plan (CMP) which shall first have been submitted to and approved in writing by the local planning authority. The CMP shall include (but not be limited to):
 - i) Access proposals (including HGV routes) and HGV trip profile;
 - ii) Areas proposed for staff parking during construction;

iii) Mitigation measures.

Development shall be carried out in accordance with the approved CMP.

- 10) No construction activity or deliveries shall take place outside the hours of 0800 to 1800 Monday to Friday, 0900 to 1300 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.
 - 11) During the construction phase of the development there shall be no open burning of waste on the site.
 - 12) If during the course of any phase of the development contamination not previously identified is found to be present, then no further development within that phase shall be carried out until the developer has submitted to, and obtained written approval from the local planning authority, for a remediation strategy detailing how the identified contamination is to be dealt with. The remediation strategy shall be carried out as approved.
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