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## Appeal Decision

Site visit made on 27 November 2017

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

**Decision date: 4<sup>th</sup> January 2018.**

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### **Appeal Ref: APP/H0738/W/17/3181469**

#### **Land at Chesham Road, Norton**

- 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 P & M Properties against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 16/0389/OUT, dated 15 January 2016, was refused by notice dated 3 February 2017.
  - The development proposed is outline application for the erection of 60 dwellings.
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#### **Decision**

1. The appeal is dismissed.

#### **Procedural Matters**

2. The application is in outline with all matters reserved for future consideration and I have dealt with the appeal on this basis.

#### **Main Issues**

3. The main issues in this case are:
  - Whether the proposal should include a contribution to the provision of education facilities and open space, in the area;
  - Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding and whether the proposed houses and surrounding properties would be safe from flooding; and
  - Whether the site can accommodate the scale of the development proposed having regard to the topography of the site, landscaping and flood risk.

#### **Reasons**

4. The appeal site is a roughly triangular shaped plot of around 2 hectares situated on the south eastern edge of Norton. A public cycleway/footpath runs to the east and beyond this lies the A19 and associated embankment. The northern, western, and southern boundaries are formed by residential properties.
5. The land slopes down in a north-south direction from Chesham Grove before beginning to rise again towards the southern part of the site. From east to west there is a significant embankment with the properties of Dovedale Close and Road situated at a higher level. The central part of the site is flat and free of vegetation before reaching the A19 embankment which rises steeply.

6. It is proposed to erect up to 60 dwellings and it is anticipated that access will be from Chesham Road, but potential accesses could also come from Ramsey View and Beaumont View. The proposal would have a density of around 30 dwellings per hectare.

*Provision for Infrastructure*

7. The Council consider that financial contributions are required towards the provision of education and open space in accordance with Core Strategy Policy 11 (CS11) and Core Strategy Policy 6 (CS6) of the Council's Core Strategy (2010). These policies are supported by the Supplementary Planning Document 6 (SPD6): Planning Obligations (2008) and the Open Space, Recreation and Landscaping Supplementary Planning Document (Open Space SPD) (2009). The Council's Committee Report indicates that the appellant has agreed to enter into a planning obligation for the standard education formula and provision of open space. I also note that the appellants have not challenged the need for such contributions in their submissions; however, a Section 106 obligation has not been provided.
8. In terms of the proposed education contribution, the Council's Committee report indicates that the appeal site is situated near to Norton Primary Academy for primary provision and North Shore Academy for secondary provision and that a contribution should be sought for education provision using the formula based calculation in Appendix B of SPD6.
9. The appeal proposal is for the provision of up to 60 dwellings and although the exact type of housing is not yet known, the Planning Statement accompanying the application indicates that the site could accommodate a range of housing types. At least some of these dwellings would be capable of accommodating families and would, therefore, create additional demand for educational infrastructure. Furthermore, the contribution would be sought towards primary and secondary provision in the local area. Consequently, I am satisfied that the contribution is necessary to make the development acceptable in planning terms and directly related to the development.
10. As the application is in outline and the exact number of dwelling units may change the specific amount of contribution would be derived from the formula based calculation set out in SPD6 which takes account of guidance on space requirements and local building costs. Thus I am satisfied that the framework provided by the SPD would ensure that any such contribution would be fairly and reasonably related in scale and kind to the development.
11. I am, therefore, satisfied that in principle that there is sufficient evidence to demonstrate that the education contribution is necessary to make the development acceptable in planning terms and that it would be directly related and fairly and reasonably related in scale and kind to the development and meets the test set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the National Planning Policy Framework (the Framework).
12. The Council has also suggested that there would be a need for the provision of open space either on-site or off-site. As set out in the Council's Committee Report, it is unlikely that there would be sufficient bedroom space to require the appellant to provide on-site play or allotment provision.
13. As the proposal would include family housing and given the size of the proposal and the number of units, I consider that it would create additional demand for a range of types of open space and recreation provision, which would be met either as on-site provision or as off-site provision, depending on the final number of

dwelling and the typology of provision. The Planning Policy Guidance 17 (PPG17) Assessment (2014 update) shows that Stockton East does not yet meet the quantity standard in relation to outdoor sports facilities, play/young people's areas and allotments.

14. The Open Space SPD sets out the quantity standards for open space and recreation provision in new development as updated in the Council's Planning Policy Guidance 17 (PPG17) Assessment (2014 update). The quantity standard for on-site provision for play/young people's areas is 1 play unit per 1500 people and the quantity standard for allotments is 0.8ha per 1000 people. Thus I agree with the Council that an off-site contribution for these typologies would be more appropriate.
15. The Council consider that a sum of up to £80,000 would be required for suitable off-site provision in the local area. Paragraph 6.8 of the SPD states that the Council will seek to agree the terms of a planning obligation at the point when an outline planning application is made.
16. As the exact scale of the development is not known the obligation would not specify an exact sum to be paid by a developer or infrastructure requirement. Instead the obligation would refer to the formula outlined in the SPD, as updated in the Open Space, Recreation and Landscaping SPD 2014 Update to Appendix 1: Charges for Open Space and Recreation Provision which would be used to calculate the scale of contributions. This sets out standard charges per person to be applied to play and allotment provision which the SPD states would be updated annually in line with RPI inflation.
17. The Council Committee report and the comments of the Highways, Transport and Environment Manager indicate that a planning obligation would support open space at the proposed destination play area at the Former Norton School to the south of the site.
18. To conclude on the matter of the open space contribution, the proposal would include houses suitable for families and I, therefore, anticipate that demand for such facilities would increase. Consequently, I consider that there is sufficient evidence to demonstrate that in principle the open space contribution is necessary to make the development acceptable in planning terms and directly related to the development. I also consider that within the framework provided by the SPD and PPG17 Assessment and subsequent updates that the contribution would be fairly and reasonably related in scale and kind meet the tests set out in Regulation 122 of the CIL Regulations and the Framework.
19. From 6<sup>th</sup> April 2015, Regulation 123 of the Community Infrastructure Levy (CIL) Regulations state that no more than 5 obligations can be used to fund particular infrastructure projects or infrastructure types which could be funded through CIL. No details have been provided by the Council with regards to the number of contributions which have funded specific education or open space projects, however, this is information which I would have sought from the Council had I decided to allow the appeal.
20. For the reasons stated, I conclude that the need for the education and open space contributions sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010. The proposal would fail to secure the appropriate contributions towards the provision of education and open space and so would be in conflict with Policies CS11 and CS6 of the Core Strategy.

### *Flood Risk*

21. The appeal site lies within Flood Zone 1 and Flood Zone 2 and the closest watercourse to the site is Billingham Beck, situated approximately 400m to the east of the site at its closest point. A Flood Risk and Drainage Assessment (FRA) was submitted in support of the application and has been revised in response to Environment Agency comments.
22. In the absence of detailed plans the FRA assumed that 20% of the site area would be buildings/structures, 35% of the area would be hardstanding and 45% of the area would be open space. The FRA has been undertaken on the basis that part of the site lies within Flood Zone 2 which has medium probability of flooding.
23. The flood extents on the Environment Agency maps are based on the limits of a tidal flood which occurred in 1978 prior to the construction of the A19. The works remodelled the topography of the area introducing raised embankments between the highway and the site. Consequently, there are now physical barriers between the site and the Billingham Beck which reduces the likelihood of flooding the Environment Agency has now withdrawn its previous objection.
24. Nonetheless, the potential for flood risk from surface water flooding needs to be addressed which falls within the remit of the Lead Local Flood Risk Authority. The Environment Agency maps also show that there is a high risk of surface water flooding on the eastern boundary of the site, with a larger area to the east of the site affected by medium to low level risk of surface water flooding.
25. The amended FRA states that there is an opportunity to provide a level of SuDs techniques appropriate for the site. However, infiltration and a watercourse outfall are not a suitable means of surface water disposal due to the local ground conditions and lack of a feasible nearby watercourse. It is, therefore, proposed that surface water collected on site is discharged into the public sewer at the calculated runoff rate of 7 l/s via a direct outfall from the attenuated site system. The surface water will be collected, attenuated and discharged off site using a drainage system that provides latency to accommodate a 1 in 100 year + 30% allowance for climate change whilst maintaining the 7 l/s discharge rate.
26. The FRA also highlights a number of further measures that would be taken to ensure that the proposed development would be protected against surface water flooding including raising the site and directing surface water runoff away from properties. Nevertheless, paragraph 103 of the Framework requires that flood risk is not increased elsewhere and whilst such measures would protect the properties within the proposed development, they would not protect surrounding properties and land.
27. The Lead Local Flood Risk Authority (LLFRA), therefore, considers that there is insufficient information regarding the management and disposal of surface water runoff from the proposed development site and has suggested that this information can be secured by way of a condition/s. The suggested conditions would include the following: a requirement for a scheme of 'Surface Water Drainage and Management' for the implementation, maintenance and management of the sustainable drainage scheme to be submitted to and approved by the local planning authority; limiting surface water run-off; and limiting development in the areas most at risk of surface water flooding to the access and garden/open space.
28. I agree that these details could be secured by way of conditions and that with the suggested conditions; the proposed development would make satisfactory

provision for surface water drainage and that the proposed houses and surrounding properties would be safe from flooding.

29. Applying the Flood Risk Vulnerability Classification in Table 2 of the Technical Guidance to the National Planning Policy Framework (2012) (the Technical Guide), the proposed development is classed as 'more vulnerable'. Table 1 of the Technical Guide states that essential infrastructure and the water compatible, less vulnerable and more vulnerable uses are appropriate in this zone. An Exceptions Test would not be required in Flood Zone 2.
30. Paragraph 101 of the National Planning Policy Framework (the Framework) states that the aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
31. Paragraph 033 Reference ID 7-033-20140306 of the Planning Practice Guidance (PPG) states that for individual planning applications where there has been no sequential testing of the allocations in the development plan, the area to apply the Sequential Test across will be defined by local circumstances. The site is not allocated in the development plan for housing. Furthermore, there is no evidence before me to demonstrate that alternative sites at lower risk of flooding have been considered.
32. I acknowledge that the Environment Agency Flood Maps denoting part of the site within Flood Zone 2 may not reflect the current topography of the site or reflect the current flood risk. However, there is no evidence before me that the site is no longer within Flood Zone 2 and the site is in any event at risk of surface water flooding. My determination of the appeal must, therefore, be on the basis that part of the site is within Flood Zone 2.
33. Although the Environment Agency has withdrawn their objection, the PPG states that in the first place it is the Local Planning Authority's responsibility to consider if the sequential test has been satisfied, informed by evidence provided by the developer. The FRA does not define a suitable catchment for undertaking the test and neither does it provide evidence of alternative sites which have been considered. Furthermore, paragraph 033 (reference ID: 7-033-20140306) of the PPG states that the sequential approach shall be applied to all sources of flooding and this has not been undertaken. On the basis of the evidence before me, I am unable to conclude that the sequential test has been undertaken in accordance with paragraphs 100-101 of the Framework or paragraph 033 of the PPG. This is a matter upon which I would have sought parties views had I decided to allow the appeal.
34. Notwithstanding the absence of an objection from the Environment Agency or the Council on this matter I am, nevertheless, required to ensure that the proposal meets the requirements of national guidance. On the basis of the evidence before me I am not satisfied that the FRA meets those requirements.
35. I have concluded that with the suggested conditions, the proposed development would make satisfactory provision for surface water drainage and that the proposed houses and surrounding properties would be safe from flooding. Nevertheless, for the reasons stated, on the basis of the evidence before me, I am unable to conclude that the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of

flooding. The proposal is, therefore, contrary to paragraphs 100-101 of the Framework.

### *Scale of Development*

36. The appeal site is a roughly triangular shaped plot of around 2 hectares and it is proposed to erect up to 60 dwellings which would result in a site density of around 30 dwellings per hectare.
37. The proposal is in outline, with all matters reserved and the application is not accompanied by any indicative site layouts. Due to the site constraints, including the topography, existing landscaping and flood risk, the Council considers that the appellant has failed to demonstrate that housing can be accommodated on the site.
38. The planning statement accompanying the application states that although the precise mix of dwellings would be considered at the reserved matters stage that the site could accommodate a range and types of housing given the existing mix of social housing, market housing, care homes/sheltered accommodation, private flats and bungalows within the nearby area.
39. The surrounding development is a mixture of semi-detached and detached single and two-storey dwellings of varying designs. A three storey apartment development lies adjacent to the A139/A19 at Mill Meadow Court. The scale, layout and appearance of the proposal would be considered at the reserved matters stage. However, the proposal would be seen within the context of the surrounding development and the indicative proposed density would broadly reflect the nature of the surrounding development.
40. The land slopes down in a north-south direction from Chesham Grove before beginning to rise again towards the southern part of the site. From east to west there is a significant landscaped embankment with the properties of Dovedale Close and Dovedale Road situated at a higher level. The central part of the site is flat and free of vegetation before reaching the A19 embankment which rises steeply and which is also landscaped.
41. The central part of the site could readily accommodate development and whilst the landscaped embankments may restrict development to a degree these are largely around the boundaries of the site. It is likely that the density would be varied across the site and that some of the steeper land would be set aside for open space or amenity land. Indeed, some of the existing landscaping could be retained as part of the development. Furthermore, given the proximity to Norton High Street there would be scope for flatted development on the site.
42. In terms of flood risk, as discussed in the second main issue, the FRA assumed that 20% of the site area would be buildings/structures, 35% of the area would be hardstanding and 45% of the area would be open space. I note that the site may not be suitable for sustainable drainage systems due to ground conditions and the distance of the nearest watercourse. It is suggested that the part of the site which is most at risk of surface water flooding should be limited to highways or open space; however, this requirement could be incorporated as part of the overall design concept. In summary, there is no cogent evidence before me that flood risk would preclude the development of up to 60 houses on the site.
43. A condition could be imposed restricting the development to no more than 60 dwellings and the final scale and detailed design of the development could be agreed at the reserved matters stage. Consequently, I am satisfied that the

appeal site could accommodate a maximum of 60 dwellings subject to detailed design considerations.

44. For the reasons stated, I consider that the site could accommodate the scale of the development proposed, up to a maximum of 60 dwellings subject to the consideration of the detailed layout and design at the reserved matters stage. No conflict, therefore, arises with saved Policy HO3 of the Stockton-on-Tees Local Plan (1997) which states that within the limits of development residential development may be permitted provided that, amongst other things, it is sympathetic to the character of the locality; that the land is not specifically allocated for another use; and takes account of and accommodates important features within the site.

#### *Other Matters*

45. The appeal site is identified within the open space audit as semi-natural green space and as Urban Open Space in the emerging Stockton-on-Tees Local Plan (Publication Draft Local Plan-September 2017). However, the Council acknowledge that the emerging Plan can be given little weight due to the early stage of preparation and as there is no formal designation of the site as open space and I see no reason to disagree.
46. Core Strategy Policy 8 (CS8) states that affordable housing provision within a target range of 15-20% will be required on schemes of 15 dwellings or more and on development sites of 0.5 hectares or more. Affordable housing provision at a rate lower than the standard target will only be acceptable where robust justification is provided. This must demonstrate that provision at the standard target would make the development economically unviable.
47. As part of the application, the appellant submitted a viability appraisal with regards to affordable housing provision which suggests that due to abnormal build costs the affordable housing requirement could not be met. However, I note that the Council's valuer has reviewed the document and considers that the development would be able to contribute towards the required infrastructure requirements whilst remaining viable.
48. The Council has suggested a planning condition which requires the scheme for the provision of affordable housing provision of 15% unless supported by relevant viability evidence. As I am dismissing the appeal for other reasons, I have not addressed this matter in any further detail. Nevertheless, I attach significant weight to the proposed affordable housing as a benefit of the scheme.
49. Concerns are raised regarding the visual impact of the proposal, however, any development would be seen within the context of the existing development on the boundaries of the site and the detailed design of the proposal would be subject to consideration at reserved matters stage.
50. Whilst the proposal may result in the loss of some trees and vegetation, the majority of the landscaping is situated on the boundaries of the site and it is anticipated that some could be retained as part of the development. Matters relating to hard and soft landscaping, means of enclosure and landscape maintenance would be subject to consideration at reserved matters stage.
51. Objections have also been raised by occupiers of surrounding properties with regards to loss of daylight, privacy and outlook. However, a significant number of neighbouring properties are set at a higher level. In any event, consideration could have been given to the relationship of the existing and future dwellings at reserved matters stage had I decided to allow the appeal.

52. A Transport Statement has been submitted in support of the proposal which shows that with the proposed additional 60 dwellings the junction would still operate at less than 25% of its theoretical capacity. I note that the Highways, Transport and Environment Manager has not objected to the proposed development and from everything which I have seen in submissions and on my site visit, I have no reason to disagree.

### **Planning Balance**

53. Paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of housing sites. Paragraph 59 of the Supreme Court judgement<sup>1</sup> of 11 May 2017 makes it clear that the primary purpose of paragraph 49 is to trigger the operation of the tilted balance in paragraph 14 where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites.
54. Whilst there is limited evidence before me in relation to housing land supply, the Council acknowledge that they cannot demonstrate a 5 year land supply. It can only demonstrate a 4.5 year housing land supply with a 20% buffer added. Consequently, I have considered the appeal proposal within the context of paragraph 14 of the Framework.
55. The proposal would contribute to housing supply, including affordable housing. It would also have some economic benefits in the short term during the construction phase and in the longer term as occupiers would support local businesses. Furthermore, I have concluded that the appeal site could accommodate up to 60 dwellings subject to detailed design considerations. These factors weigh in favour of the proposal.
56. On the other hand, I have concluded that the proposal would fail to secure the appropriate contributions towards the provision of education and open space and would, therefore, be in conflict with the development plan. I am also unable to conclude that the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Conflict, therefore, arises with paragraphs 17, 72, 73 and 100-101 of the Framework.
57. Consequently, notwithstanding the absence of a five year land supply, having regard to the Framework as a whole, I conclude that the adverse impacts of granting permission for this scheme would significantly and demonstrably outweigh the benefits. The proposal would not, therefore, represent sustainable development.

### **Conclusion**

58. For the reasons stated and taking all other considerations into account, the appeal should be dismissed.

*Caroline Mulloy*

Inspector

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<sup>1</sup> Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37