
Appeal Decision

Hearing held on 31 January 2017

Site visit made on 31 January 2017

by **Philip Lewis BA (Hons) MA MRTPI**

Decision date: 08 March 2017

Appeal Ref: APP/H0738/W/16/3157935

**Thornaby Football Club, Acklam Road, Thornaby, Stockton-on-Tees
TS17 7JT**

- 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 Carlington Developments Ltd against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 14/2876/OUT, dated 30 October 2014, was refused by notice dated 9 March 2016.
 - The development proposed was originally described as '*outline planning permission is sought for the erection of up to 60 residential dwellings, and the re-development of the existing football club facilities at land at Thornaby Football Club, Acklam Road, Thornaby*'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application is in outline, with matters reserved for future consideration except for access. Plans showing site location, proposed site plans, existing and proposed site sections, a topographical plan and a landscape and visual analysis were submitted and I have had regard to these in determining the appeal. The appellant confirmed at the Hearing that whilst the plans are indicative, they do illustrate what is intended to be built and there is not an alternative detailed scheme under consideration.
 3. As part of the appeal process, a signed and completed S106 agreement has been submitted (dated 21 February 2017). This would secure the replacement of sports pitches and facilities, a community use agreement and provisions regarding the lease of the facilities, contributions towards infrastructure provision for education, highway mitigation and employment and training. A discussion was had regarding the requirements for planning obligations during the Hearing and the parties subsequently made further comments in writing. I will return to this matter.
 4. It is not disputed that the land is located within the settlement limits of Thornaby as defined in the development plan. The Council accepts that it cannot demonstrate a 5 year supply of deliverable housing sites. I am aware that the Council had been preparing a Regeneration and Environment Local Plan (RELP), but is now at the early stages in preparing a new Local Plan.
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Main Issues

5. The main issues for the appeal are:

- The effect of the proposed development on the character and appearance of the area with particular regard to protected trees and Thornaby Cemetery.
- The effect of the proposal on the provision of sports and recreation facilities in the area and whether adequate provision is made in respect of affordable housing, education, highways infrastructure and employment and training.

Reasons

Character and appearance

6. The appeal site is situated on the edge of Thornaby, in an area characterised by recreational uses and Thornaby Cemetery, with significant areas of grassland and established woodland and trees. The appeal site consists of several distinct elements. It is accessed from Acklam Road via an existing roadway which leads to a dwelling known as Teesdale House and a derelict former club house building and car park. The site extends further to the east, before widening out to an area of open sports pitches adjacent to Thornaby Cemetery. To the north of these and at a lower level, are situated the playing pitch and club facilities of Thornaby Football Club and a disused bowling green.
7. The appeal site falls within the Stainsby Beck landscape character area as defined in the Stockton Borough Council Landscape Character Assessment (LCA). The LCA describes the area as a green corridor between the boroughs of Stockton and Middlesbrough, having a mixed land use, including woodland, public open space, footpaths, golf course, agriculture and cemetery, strongly influenced by the residential and industrial edge of Thornaby. The LCA notes the influence of major roads on the area, as evident during the site visit.
8. The proposed development would consist of up to 60 dwellings, occupying the southern part of the appeal site, including the areas containing the disused buildings which have previously been the subject of planning permission for residential development and the sports pitches adjacent to Thornaby Cemetery. It is proposed that replacement playing pitches and facilities are provided at the site of the existing Thornaby Football Club and former bowling green, along with improvements to the facilities of the Football Club in terms of the main playing pitch, provision of a club house building, car parking and general upgrades and maintenance. At the Hearing, the Council confirmed that its concerns with the appeal scheme principally lay with the effect of the proposed development on the area of sports pitches adjacent to Thornaby Cemetery.
9. The part of the appeal site containing the sports pitches adjacent to the cemetery has, despite its proximity to the edge of the built up area, an open character derived from its recreational use. The introduction of residential development into this area would inevitably change the open character of the area through the introduction of new buildings and associated infrastructure, to the detriment of the established character and appearance of the area.
10. The appeal site contains a number of trees which are subject of Tree Preservation Orders. The appellant in their Arboricultural Impact Assessment¹,

¹ Elliott Consultancy Ltd dated June 2016

(AIA) sets out that the trees on the south and east boundaries of the sport pitch area adjacent to the cemetery should be felled due to the proximity of trees to the cemetery wall and concerns over the sustainability of integrating a group of trees within a residential development. Although the site layout and landscaping are reserved matters, given the lack of an alternative detailed scheme under consideration, I consider it likely that pressure from future occupiers of the proposed dwellings to undertake works to trees would be inevitable due to the shading effects from the trees, should they be retained.

11. I note from the AIA that a significant number of the trees which are proposed to be felled are not over mature, are in good condition, do not require significant works, and would therefore continue to make a contribution to the character and appearance of the area for a significant number of years. Consequently, whilst there is conflict between some of the trees and the cemetery wall, and having considered the comments of the Council's Tree Officer as reported by the appellant, I do not consider that there are good arboricultural reasons for removing all of the trees. I consider that these trees make a valuable contribution to the amenity of the area in terms of the setting of the cemetery and within the wider landscape. Whilst it is proposed that the trees would be replaced by large scale nursery grown trees, there would inevitably be a significant reduction in the amenity value provided by the trees until the replacement trees matured.
12. I agree with the Council that the removal and replacement of the trees and development of the dwellings would alter the setting of the cemetery and that the proposed dwellings would be visible to mourners and visitors. However, the visibility of the housing would reduce over time as the replacement trees matured and although the outlook from the cemetery would change, I do not consider the visibility of dwellings from the cemetery to be incongruous.
13. To conclude on this matter, I find that the appeal proposal would give rise to harm to the character and appearance of the area through the erosion of the open character of the area and the significant loss of trees. The proposal is contrary therefore to Stockton-on-Tees Borough Council Core Strategy Development Plan Document March 2010 (CS) CS Policy CS3. CS Policy CS3 in criterion 8 includes that, in designing new development, proposals will make a positive contribution to the local area by protecting and enhancing important environmental assets and responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees.
14. The appeal proposal also conflicts with saved Policy HO3 of the Stockton-on-Tees Local Plan 1997 (LP) which permits residential development provided that it does not result in the loss of a site which is used for recreational purposes, is sympathetic to the character of the locality and takes account of and accommodates important features within the site. I also do not consider that the proposal responds well to or improves the local character and quality of the area contrary to paragraphs 58 and 64 of the National Planning Policy Framework (the Framework).
15. Reference has been made by the parties to CS Policy CS10 which sets out, amongst other things that the separation between settlements, together with the quality of the urban environment, will be maintained through the protection and enhancement of the openness and amenity value of identified 'Green Wedges'. A part of the appeal site falls within Stainsby Beck Valley, Thornaby

green wedge as is indicatively shown in the CS. I have taken into account the judgement in *Tiviot*² that any Green Wedge annotations fell away with the adoption of the CS and the appeal decision in regards to land south of Cayton Drive Thornaby³ referred to me by the appellant. The Council does not contest the appeal on this basis and I agree with the statement in the Council officer's report that the proposed development would not be significantly detrimental to the function of the Green Wedge. Consequently, I do not find that the proposal conflicts with CS Policy CS10.

Affordable housing, sports and recreation, education and other infrastructure

Affordable housing

16. The draft S106 agreement discussed at the Hearing made provision for not less than 15% affordable housing. At that time, there was no indication that the issue of affordable housing provision in the appeal scheme was in dispute between the parties. Before I closed the Hearing, I set a deadline for the receipt of a completed planning obligation. However, the completed S106 agreement received differed substantially from that discussed at the Hearing in that it contains no provisions regarding affordable housing. Affordable housing provision is required by CS Policy CS8 which sets a target range of 15-20 % on schemes of 15 dwellings or more. No explanation was provided by either party as to the reason for the omission of affordable housing from the completed S106 agreement. I have had no indication that the issue of affordable housing provision in the appeal scheme is in dispute between the parties.
17. I have considered whether this matter could be dealt with by way of a planning condition. The Planning Practice Guidance (PPG)⁴ sets out that a negatively worded planning condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. It also states that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. The PPG also sets out that in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement may be appropriate in the case of more complex and strategically important development, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
18. It has not been demonstrated that there are exceptional circumstances in this case for the use of a planning condition for affordable housing provision in respect of the complexity or strategic importance of the development, or that the delivery of the development would otherwise be at serious risk. Therefore, given the particular circumstances of the case, I do not consider that it would be appropriate to deal with the provision of affordable housing by way of such a planning condition. Consequently, I find that no provision has been made for affordable housing provision as required by CS Policy CS8.

Sports and recreation

19. The appeal proposal involves the development of housing on an area of sports pitches and the provision of replacement facilities. The Framework in

² *Tiviot Way Investments Ltd v SoS for CLG and Stockton-on-Tees Borough Council*, July 2014

³ APP/H0738/W/15/3136587

⁴ 010 Reference ID: 21a-010-20140306

paragraph 74 states that existing open space, sports and recreational buildings and land, including playing fields shall not be built on except in defined circumstances which include the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. In this case, the relevant statutory body, Sport England, does not object to the proposal subject to certain conditions.

20. I am satisfied that the S106 agreement would secure the necessary two replacement football pitches available for use before the any development commenced on the existing football pitch area, a community use agreement and a lease of the facilities to Thornaby Football Club, thereby meeting those requirements of Sport England. The remaining requirements of Sport England could be addressed by way of planning conditions were I so minded to allow the appeal. I have had regard to the improvements to the facilities of Thornaby Football Club which would result from the proposed development and that the provision of sports facilities would be enhanced.

Education provision

21. The Council seeks contributions towards primary school education at either Harewood Primary School or St Patricks RC Primary School, which would only be required if there are insufficient school spaces available to accommodate the children generated by the development. The Council's Supplementary Planning Document 6: Planning Obligations 2008 sets out the formula to be used in calculating education contributions.
22. I have assessed this provision against the tests in paragraph 204 of the Framework and the requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended). I have no information before me regarding any specific projects to which the contribution would relate nor in respect of capacity at the named schools and so I cannot be satisfied that the education contribution would be fairly and reasonably related in scale and kind to the development. I find therefore that this provision does not comply with Regulation 122 as I do not consider that it has been demonstrated that it is necessary. I have considered the appeal decisions⁵ referred to me by the Council in this regard but I do not know what detailed evidence was before those Inspectors. I have also taken into account the Council's references to the statutory duty of the Education Authority under the Education Act 1944, the submission of a School Capacity Pupil Forecast Return and the School Admission Code (December 2014), but those matters do not lead me to a different decision in regards to the Regulation 122 tests.

Highways infrastructure and local employment

23. The S106 agreement sets out that no development will be commenced until a Highways Agreement has been entered into regarding the provision of a dedicated right turn facility on Acklam Road at the location of the site access. It also seeks to ensure that a minimum of 10% of construction jobs would be made available to residents in the local area. I am satisfied that these obligation requirements meet the tests in the Regulations.
24. To conclude on this matter, the proposed development does not make adequate provision for affordable housing and so conflicts with CS Policy CS8.

⁵ APP/H0738/A/14/2227047 and APP/H0738/A/13/2193511

Other matters

25. I have had regard to the letters of support submitted in respect of the proposal and the policies of the development plan and Framework cited. I have also had regard to the planning history of the site and the previously approved schemes. Additionally, I have taken into account the case studies of community users agreements, although I have few details of these schemes to consider. The appellant's comments regarding the Council's handling of the application are however matters for local government accountability.

Planning balance and Conclusions

26. Paragraph 49 of 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 deliverable housing sites. CS Policy CS3 has the effect of constraining the supply of land through protecting environmental assets, Policy CS8 through density controls and saved LP Policy H03 through setting out criteria including the safeguarding of recreational sites. So, for the purposes of this appeal, they should be regarded as relevant policies for the supply of housing.
27. However, although CS Policies CS3, CS8 and LP Policy H03 are out of date, this does not mean that they no longer apply. Indeed, because the supply of housing is agreed to be at 4.5 years (as set out in the Statement of Common Ground) this is not significantly below the 5 years supply expected. However, they clearly carry less weight than they would if there were a 5 year supply of deliverable housing sites.
28. I have concluded above that the proposal would cause significant harm to the character and appearance of the area and be contrary CS Policy CS3 and saved LP Policy H03. In addition I find that the proposal conflicts with CS Policy CS8 in that it does not provide for affordable housing, which I consider gives rise to significant harm. It is therefore contrary to the Development Plan as a whole. Balanced against this are the contribution to the supply of housing and the improvements to sports facilities which I give moderate weight. I also give limited weight to the economic benefits of the scheme, that the site is in a sustainable location within the settlement boundary and involves in part, reuse of previously developed land.
29. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan. For these reasons, the appeal should be dismissed.

Philip Lewis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathan Easton	Of Counsel
Fahim Farooqui	Total Planning Solutions (UK) Ltd
David Lister	Designer
Steve Lister	
Trevor Arnold	

FOR THE LOCAL PLANNING AUTHORITY:

Greg Archer	Principal Planner
Sarah Wood	Chartered Landscape Architect
Peter Shovlin	Urban Landscape Manager

INTERESTED PERSONS:

Councillor Paul Rowling	Stockton Borough Council
Steve Walmsley	Chairman of Thornaby Town Council
Ray Morton	Thornaby Football Club

DOCUMENTS

- 1 CIL Compliance letter Stockton-on-Tees Borough Council dated 27 January 2017
- 2 Updated (not completed) S106 agreement submitted by the appellant
- 3 Updated visual impact study
- 4 Stockton-on-Tees Borough Council Supplementary Planning Document 6: Planning Obligations Adopted Version May 2008
- 5 Core Strategy Policy 4 (CS4) – Economic Regeneration