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# Appeal Decision

Site visit made on 5 June 2018

**by G Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 September 2018**

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**Appeal Ref: APP/X1355/W/18/3197684**

**Land to the south of Castlefields, Esh Winning, Co. Durham**

- 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 Barry, Billy & Gillian Finley against the decision of Durham County Council.
  - The application Ref DM/17/00641/OUT, dated 22 February 2017, was refused by notice dated 13 February 2018.
  - The development proposed is a residential development of up to 66 dwellings with detailed consent for access and all other matters reserved.
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## Decision

1. The appeal is allowed and outline planning permission is granted for a residential development of up to 66 dwellings at land to the south of Castlefields, Esh Winning, Co. Durham, in accordance with the terms of the application, Ref DM/17/00641/OUT, dated 22 February 2017, subject to the conditions in the schedule attached to this decision letter.

## Application for costs

2. An application for costs was made by Barry, Billy & Gillian Finley against the decision of Durham County Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. The application was submitted in outline including consideration of access, with all other matters reserved. I have dealt with the appeal on that basis, treating any details of reserved matters shown on the plans as being illustrative.
4. Since the Council took its decision and the appeal was made, a revised version of the National Planning Policy Framework (the Framework) has been published. This is a material consideration which should be taken into account from the date of publication and I have therefore determined the appeal in light of the revised Framework. The main parties have been given an opportunity to comment on the revisions where they were relevant to this appeal and I have taken their responses into account in reaching my decision.
5. The appellant has queried whether the Local Plan<sup>1</sup> (LP) policies referred to by the Council are saved given the date of the Secretary of State's Saving Direction<sup>2</sup>. However the Saving Direction clearly states that its effect is that

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<sup>1</sup> City Of Durham - Local Plan, 2004.

<sup>2</sup> 31 August 2017.

the three year transitional period set out in the Act<sup>3</sup> does not apply. Although the covering letter accompanying the Saving Direction encourages progress to be made on replacement plans and the prompt replacement of saved policies, the Saving Direction itself does not apply a time limit. Therefore, on the basis of the evidence before me, LP Policies E7 and H13 are saved and form part of the development plan. I have determined the appeal on this basis.

### **Main Issues**

6. The main issues raised by this appeal are whether the appeal site is an appropriate location for new housing having regard to the development plan and national planning policy, the effect the development would have on the character and appearance of the area and the effect it would have on any recreational or amenity value the site may possess.

### **Reasons**

7. The appeal site comprises an area of undeveloped pasture. It is situated adjacent to existing development with the rear of adjoining dwellings largely bounding the site to the north and west, the latter separated from it by a bridleway. Similar pasture bounds the site on the other sides. Access would be taken from an existing one which serves the adjacent Castlefields housing estate and pedestrian links would join onto existing footpaths and bridleways in the vicinity. The indicative layout shows a deep landscape buffer to the south and east of proposed housing areas and a narrower one adjacent to the existing bridleway to the west.

#### *Appropriate location*

8. Esh Winning has educational, social, recreational and commercial facilities and services and well as employment sites which would be convenient and accessible from the proposed development site. Nevertheless, the site lies in the countryside immediately outside the settlement boundary for Esh Winning. Saved LP Policy E7 advises that development in such situations would only be permitted where it accords with particular LP Policies but there is no suggestion that any of these exceptions apply to the development proposed. The development would therefore be contrary to saved LP Policy E7.
9. However, the supporting text to saved LP Policy E7 establishes that it was based on locating most housing and other development within existing settlements where at the time sufficient sites had been allocated to meet needs over the Plan period (up to 2006). There is no suggestion that the evidence base supporting the LP is up to date. The Policy does not accord with the Framework's approach to the location of housing development including in the countryside. This, the age of the LP and the evidence on which it will have been based mean that saved LP Policy E7 only carries limited weight.

#### *Character and appearance*

10. The undeveloped meadow character of the site and adjoining land to the south provides part of the green, countryside setting of the settlement. With the exception of those parts of the site the indicative drawings show being occupied by tree planting or drainage, this character would be lost. This countryside character can presently be experienced from existing dwellings

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<sup>3</sup> Planning and Compulsory Purchase Act 2004, paragraph 1(2)(a).

which look over the site, particularly those at Castlefields which back onto the site without any intervening tree screening. It can also be experienced by users of bridleways and footpaths in the area, particularly that running along the western boundary of the site, and from informal routes which run across the site or land to the south, albeit that existing buildings adjoining the site are evident from these routes too.

11. Nevertheless, the site and adjacent undeveloped land is largely enclosed by existing development on two sides along with extensive wooded areas along the Deerness Valley to the south and in the vicinity of the sewage works to the east. This visually contained nature would considerably limit the visual effect the proposed development would have on the wider area. Consequently the development would not have an unacceptable effect on the wider landscape of the area.
12. There is the potential for proposed landscaping areas to break up views of new dwellings from surrounding footpaths as it matures and this would, in time, mitigate intrusion into the appearance of the area. The development's situation on the upper part of the slope and the intervening undeveloped land would limit harmful intrusion into glimpses through the trees from the Deerness Valley Way which runs to the south and from where houses at Castlefields are presently visible.
13. By occupying space to the south and east of existing housing the development would be well related to the existing built form of the settlement. This effect would be reinforced by the narrower width of the site where it would be adjacent to Castlefields which is presently at the eastern end of the settlement. The proposed planting areas around the outside of the site would, in time, create a well-defined landscape edge to the settlement at this point, in positive contrast to the present arrangement where rear garden fences abut the site.
14. The site does not possess any particular features which distinguish it from other countryside although its undeveloped state means that the development would result in the loss of an open site and part of the countryside.
15. Intervening trees provide considerable screening of the site from the B6302, an effect which, due to their situation and density, would largely endure even when they are not in leaf. The development of the site would not significantly alter this except for a very limited view directly down the access route from that road. Therefore whilst the development would transform the existing open pasture character of the site, harmful effects would be limited in scale and effect.
16. Considered together, the proposal would have a very limited harmful effect on the area's character and appearance and one which would diminish further in the medium to long term as landscaping matures.
17. Recognising the intrinsic character and beauty of the countryside, any adverse effects would be very limited and in particular would not have a significant adverse effect on the character and appearance of existing residential areas. The development would therefore not be contrary to saved LP Policy H13 in this respect.

### *Recreational or amenity value*

18. The Council understands that the land of which the site forms a part has been used for many years for informal recreation by local residents. Nevertheless the land is private, there is no indication that there are any formal arrangements for access across it or its use for recreation, and it is not allocated in the development plan for recreational purposes. These circumstances mean that its use as such only carries limited weight.
19. Representations from local residents and other interested parties make it clear that access to the site is valued by them for walking and informal recreation. However, irrespective of the proposed development, there is no indication that such access could be guaranteed in future should the owners seek to withhold it.
20. The proposed development proposes that a new public footpath be created and formally designated. This would traverse the land immediately outside the site and retain an east west route in the area as well as linking to existing bridleways in the vicinity which themselves link into a wider footpath network.
21. The proposed arrangement would be for a linear route through the proposed landscaped area rather than access to an open field and more restricted in that respect than the existing arrangement. Whilst the site itself would no longer be accessible, the proposed footpath would mitigate for any such loss and indeed be an improvement by creating a formalised public access where there is presently none.
22. In these circumstances the development would not have a significant adverse effect on the amenities of residents and consequently it would not be contrary to saved LP Policy H13. It would accord with the Framework's requirement of improving public access to the countryside.

### **Other Matters**

23. As well as concerns about the main issues above, interested parties have raised a number of other objections to the proposed development.
24. Interested parties have raised concerns about flooding including that this has affected nearby homes in the past. However, the appellant's Flood Risk Assessment and Outline Drainage Strategy identifies a low risk of flooding and in the absence of substantive evidence to the contrary the development would not be located where it would give rise to unacceptable effects on flooding to existing or proposed homes. A sustainable drainage approach is proposed for the site and on this basis there would be no material harm in terms of flooding.
25. The Framework encourages making as much use as possible of previously developed land and interested parties consider that there are such sites elsewhere in the settlement which should be developed first. However, the Framework does not necessarily preclude the development of other sites and the development needs to be assessed against the policies in the Framework taken as a whole as part of the planning balance below.
26. Interested parties point to a site being identified in the Strategic Housing Land Availability Assessment as being unsuitable. The Council's committee report points out that this referred to a larger site which included the appeal site but also extended farther south toward the Deerness River with a greater

landscape impact and in a higher flood risk zone. Based on my findings on the development's effect on the landscape and there being no suggestion that the appeal site is at risk of flooding, this therefore carries little weight.

27. The appellant's Ecological Impact Assessment (as complemented by a Great Crested Newt Survey) advises that there would be no significant adverse effects on species or habitats subject to mitigation measures which could be required by a planning condition. Subject to such mitigation measures there would not be unacceptable effects on wildlife and habitats.
28. Vehicular access would be taken from a spur or turning head which leads from a junction from the B6302 road that serves the existing Castlefields housing estate. The junction affords acceptable visibility in both directions. There is no substantive evidence that the increase in vehicles using the access point would have a materially harmful effect on the safety of any road users.
29. The Coal Authority do not object to the development subject to site investigations and, depending on findings, mitigation. Therefore whilst the site is in an area they have identified as being high risk for development, a planning condition could ensure that hazards to health could be mitigated.
30. I note that the Council reached similar conclusions on these other matters. They do not indicate that the development would be unaccepted in these regards.

### **Planning Obligation**

31. A Planning Obligation in the form of an agreement signed with the Council has been submitted. This would provide for i) a minimum of 20% affordable housing, ii) a financial contribution for the provision or maintenance of play or recreation space in the area, iii) a scheme for upgrading the bridleway which runs along the west of the site and a footpath connection between Castlefields and the bridleway running to the east of the site, and; iv) the creation and dedication of a new public footpath linking those bridleways either side of the site.
32. The elements of the Obligation are necessary to make the scheme acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the proposal. In the light of the evidence, all the elements of the Obligation meet the policy in paragraph 56 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. It can therefore be taken into account.

### **Overall balance**

33. The appellant has referred to an appeal decision<sup>4</sup> where it was found that the Council could not at that time demonstrate a five year supply of deliverable housing sites. The Council consider that by applying the national 'standard method' that there is a housing land supply in excess of 6 years. However, as the supply has not been established in a recently adopted plan or subsequent annual position statement, the Council's findings in this regard cannot be considered to have been demonstrated in the terms of paragraph 74 of the Framework.

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<sup>4</sup> APP/X1355/W/17/3180108, 10 May 2018.

34. This means that the policies which are most important for determining the application are out-of-date in the Framework's terms. In any event, it is not a matter of dispute between the main parties that the development plan is out of date and that the presumption in favour of development in the Framework applies. Nevertheless the development would be contrary to saved LP Policy E7, albeit that it carries limited weight.
35. The delivery of new housing would be a benefit. Even if the Council are correct in their calculation of a current housing land supply and that there is not a shortfall, there would still be social and economic benefits in delivering new housing and these would be enhanced by a minimum of 20% of the new homes being affordable, which itself would be a considerable benefit. Creating a public footpath across land adjacent to the site would not only mitigate any effects of the loss of informal access but would be a benefit as a result of its formal status. The scheme to upgrade the bridleway and create a link to another would be a benefit to all users of those bridleways. There would be limited economic benefits through construction jobs during the implementation of the development and ongoing spend by new occupiers some of which could be locally.
36. The harm caused by the loss of space for informal recreation would be very limited given that the site is private land and loss of informal access routes would be mitigated by way of formal re-provision. The harm to the character and appearance of the area would be very limited due to the particular location and characteristics of the site. Considered together these very limited adverse impacts would not significantly and demonstrably outweigh the benefits of the development, when assessed against the Framework policies taken as a whole. These are circumstances where the Framework states that planning permission should be granted. Material considerations therefore indicate that a decision should be taken contrary to development plan, specifically saved LP Policy E7, in this case.

### **Conditions**

37. It is necessary to specify the approved drawings as this provides certainty. It is necessary to require that the development accords with mitigation measures in the Ecological Impact Assessment to avoid adverse effects on wildlife and habitat. In order to ensure that any archaeology on the site is investigated a scheme of fieldwork, analysis, recording and subsequent publication is required. In order to ensure that any potential risks to health of future occupiers from contamination or ground gas are properly managed it is necessary to require schemes to investigate and deal with such issues.
38. Protecting trees around the site from potential construction damage will help to preserve the character and appearance of the area. In order to ensure the development is properly drained in accordance with a sustainable approach the requirements of the Flood Risk Assessment and Outline Drainage Strategy need to be adhered to and a drainage scheme needs to be approved. Neighbours' living conditions and highway safety will be protected by limiting construction hours and requiring approval of, and adherence to, a Construction Management Plan.

## **Conclusion**

39. For the above reasons, and taking all other matters into account, material considerations indicate that a decision should be taken contrary to the development plan and the very limited adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the development. The appeal is therefore allowed.

*G Underwood*

INSPECTOR

## **Schedule of Conditions**

- 1) Details of the 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 takes place 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 take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan 100-30 (Rev 8) and Proposed Layout of Access 100-31 (Rev 5).
- 5) The development hereby permitted shall be carried out in accordance with all ecological mitigation measures, advice and recommendations within the Ecological Impact Assessment 'Coppice Hill, Esh Winning' by E3 Ecology Ltd dated October 2016.
- 6) No development shall take place until the implementation has been secured of a phased programme of archaeological work in accordance with a written scheme of investigation (the Scheme), including a timetable for the investigation, which has been submitted to and approved in writing by the local planning authority. The Scheme shall provide for:
  - (a) the proper identification and evaluation of the extent, character and significance of archaeological remains within the application site by means of trial trench evaluation to inform the reserved matters applications;
  - (b) an assessment of the impact of the proposed development on any archaeological remains identified in the evaluation phase;
  - (c) proposals for a mitigation strategy for the investigation, recording and recovery of archaeological remains and the publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible, should features be identified in the trenching phase (a);

(d) sufficient notification and allowance of time to archaeological contractors nominated by the developer to ensure that archaeological fieldwork as proposed in pursuance of (a) and (c) above is completed prior to the commencement of permitted development in the area of archaeological interest, and;

(e) notification in writing to the County Durham and Darlington County Archaeologist of the commencement of archaeological works and the opportunity to monitor such works.

The development shall then be carried out in accordance with the approved Scheme.

- 7) Prior to the first occupation of any dwellings, a copy of any analysis, reporting, publication or archiving required as part of the archaeological mitigation strategy shall be deposited at the County Durham Historic Environment Record.
- 8) The development hereby permitted shall not commence until a pre-commencement scheme to deal with contamination has been submitted to and approved in writing by the local planning authority. The full scheme, both pre-commencement and completion shall include the following, unless the local planning authority confirms in writing beforehand that any part of sub-sections (a), (b), (c) or (d) are not required.

Throughout both the pre-commencement and completion phases of the development all documents submitted relating to Phases 2 to 4 as detailed below shall be carried out by competent person(s) and shall be submitted to and approved in writing by the local planning authority.

#### Pre-commencement

(a) A Phase 2 Site Investigation and Risk Assessment (SIRA) is required to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. Prior to the Phase 2 SIRA a Sampling and Analysis Plan is required.

(b) If the Phase 2 SIRA identifies any unacceptable risks, a Phase 3 Remediation Strategy detailing the proposed remediation and verification works is required. If gas protection measures are required a verification plan is required detailing the gas protection measures to be installed, the inspection regime and where necessary integrity testing programme. The installation of the gas membrane should be carried out by an appropriately qualified workforce and the verification of the installation should be carried out by an appropriately competent, experienced and suitably trained person(s) (preferably independent to the installer) to ensure mitigation of the risk to the buildings and the people who occupy them. No alterations to the remediation proposals shall be carried out without the prior written agreement of the local planning authority.

#### Completion

(c) During the implementation of the remedial works (if required) and/or development if any contamination is identified that has not been identified pre-commencement, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be carried out in accordance with the provisions of this condition

and where necessary a Phase 3 Remediation Strategy shall be prepared in accordance with the provisions of this condition. The development shall be completed in accordance with any amended specification of works.

(d) Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy(ies) shall be submitted to and approved in writing by the local planning authority within 2 months of completion of the development. If integrity testing of the membrane(s) was required a verification pro-forma to this effect must be included.

9) No development shall commence until a scheme has been submitted to and approved in writing by the local planning authority which provides for:

(a) Intrusive site investigations/gas monitoring for approval;

(b) The undertaking of that scheme of intrusive site investigations/gas monitoring;

(c) The submission of a report of findings arising from the intrusive site investigations/gas monitoring;

(d) The submission of a scheme of remedial works/mitigation for approval, and;

(e) Implementation of that remedial work/mitigation.

The development shall thereafter be implemented in accordance with the approved scheme.

10) The development is to be carried out in accordance with the Arboricultural Impact Assessment by Dendra Consulting Ltd dated July 2017 Ref BHA\_Castlefields\_AIA1.2. No site clearance, preparatory work or development shall take place until a scheme for the protection of trees and hedgerows on and adjacent to the site (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of retained trees shall be carried out as approved and retained for the construction phase of the development.

11) The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment (FRA) by Coast Consulting Engineers Ltd dated 21st April 2017 – A – 14/07/17.

12) No Development shall commence until a scheme for the disposal of foul and surface water from the development hereby permitted has been submitted to and approved in writing by the local planning authority. Thereafter the development shall take place in accordance with the approved details.

- 13) No development, site clearance or preparatory work shall be undertaken outside the hours of 0730 and 1800 Monday to Friday and 0730 and 1300 on a Saturday, with no works to take place on a Sunday or Bank Holiday.
- 14) Prior to the commencement of any part of the development, site clearance or preparatory work hereby permitted, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include as a minimum, but not necessarily be restricted to, the following:
  - (a) A Dust Action Plan including measures to control the emission of dust and dirt during construction;
  - (b) Details of methods and means of noise reduction;
  - (c) Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration;
  - (d) Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site;
  - (e) Designation, layout and design of construction access and egress points;
  - (f) Details for the provision of directional signage (on and off site);
  - (g) Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;
  - (h) Details of provision for all site operatives for the loading and unloading of plant, machinery and materials;
  - (i) Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period;
  - (j) Routing agreements for construction traffic;
  - (k) Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - (l) Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works;
  - (m) Detail of measures for liaison with the local community and procedures to deal with any complaints received, and;
  - (n) Demonstration that regard shall be had to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.The approved Construction Management Plan shall be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

\*\*\* End of Conditions \*\*\*