



## Appeal Decision

Site visit made on 19 June 2018

by **Gareth Wildgoose BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2018

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**Appeal Ref: APP/H0738/W/18/3195823**

**Land at 18A Braeside, Kirklevington TS15 9NB**

- 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 Mr J Mason against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 17/0511/OUT, dated 24 February 2017, was refused by notice dated 7 September 2017.
  - The development proposed is a residential development comprising eleven dwellings, including two affordable homes.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr J Mason against Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application was submitted in outline with all detailed matters other than means of access reserved for future approval. The appeal is determined on that basis and, therefore, the plans and illustrative material submitted in so far as they relate to appearance, landscaping, layout and scale are taken into account for indicative purposes only.
4. A signed and dated planning obligation by unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 (UU) has been provided as part of this appeal. I consider the UU in relation to the Regulatory tests of the Community Infrastructure Levy (CIL) in my decision.

### Main Issues

5. The main issues are:
  - whether the development proposed would be consistent with the objectives of policies relating to the location and supply of housing, with particular regard to the accessibility of local services, facilities and modes of travel, and;
  - whether the development would provide for a suitable living environment for future residents, with particular regard to noise and odours.

## Reasons

### *Location and supply of housing*

6. The appeal site consists of No 18A Braeside (No 18A), a detached bungalow that is accessed from a cul-de-sac, and its associated land at the rear beyond its residential curtilage. The land at the rear has a downward slope and includes a paddock that is enclosed and subdivided by post and rail fencing, together with a separate hardstanding area adjacent to the access where a stable block and a large outbuilding used for garaging of vehicles are located. A further paddock within the appellant's ownership lies beyond the rear boundary of the site, whilst there is agricultural land to the east, a small woodland to the west and a sewage treatment works lying beyond that is accessed from a track off the neighbouring Ash Grove cul-de-sac.
7. Based upon the evidence before me, No 18A and the properties immediately surrounding are within the development limits of the Kirklevington village as currently defined by Saved Policy EN13 of the Stockton-on-Tees Local Plan 1997 (LP). However, the majority of the site lies outside of the boundary on the edge of the village and therefore, is in an open countryside location. Whilst not specifically referred to in the Council decision notice, a proposed development for up to eleven dwellings, including two affordable homes, would not fall within the developments listed as permitted by Saved Policy EN13 of the LP. Nonetheless, although the proposal would result in a limited loss of open countryside, the site offers little contribution to the openness and separation between settlements given the presence of the existing sewage treatment works which projects further to the north.
8. The construction of dwellings on the site would result in built development on some previously developed land together with greenfield land that currently consists of a paddock. However, it is evident that when taken together with the existing development in the surrounding area, including the presence of the sewage treatment works, and the differences of topography within the site and the surrounding area that there is some scope to absorb development adjoining the existing settlement boundary and utilising the existing built form as a backdrop. In that context, the development would not consist of new isolated homes in the countryside. Furthermore, an appropriately designed development to assimilate with the varied character of properties in the area would be capable of being provided as part of the reserved matters relating to appearance, landscaping, layout and scale. Consequently, the conflict with the above policy and the development strategy relates specifically to the existing designation of land as open countryside.
9. Policy CS2 of the Stockton-on-Tees Core Strategy Development Plan Document (CS), adopted March 2010, is also relevant to the proposal in so far as it seeks that accessibility will be improved and transport choice widened. In doing so it seeks to ensure that all new development is well serviced by an attractive choice of transport modes, including public transport, footpaths and cycle routes, fully integrating into existing networks to provide alternatives to the use of all private vehicles and promote healthier lifestyles.
10. The development would adjoin Kirklevington village where there are limited services and facilities available consisting of a church, a primary school, a village hall, a public house, a post box, an equipped children's play area and a car repair garage. It is, therefore, reasonable that future occupiers of the

- proposed dwellings would have to travel out of Kirklevington in order to access other services and facilities such as healthcare, secondary schools and higher education, shops and other retail and recreation facilities, and for employment.
11. Kirklevington is located approximately 1.2 miles from the edge of the larger village of Yarm that lies to the north along the A67, and 2 miles to its High Street. Yarm has a much wider range of services, facilities and employment opportunities. In particular, a railway station, small supermarket, shops and other services, a secondary school and sixth form college and recreation grounds are located at its southern extent that lies closest to Kirklevington. However, although there are bus stops located on Thirsk Road (A67), based on the evidence before me and observations during my visit there are no regular bus services from those stops that link Kirklevington to neighbouring villages. It has been drawn to my attention as part of a separate appeal that a Community Bus Service has been introduced and provides a free transport option for individuals who are unable to, or have difficulty accessing local bus services which offers connections with Yarm, Maltby and Thornaby. Nonetheless, that bus service is limited as it is indicated as operating hourly between 1015 to 1418 hours on only Tuesdays and Thursdays.
  12. A planning obligation associated with a separate outline planning permission granted on land to the west of Thirsk Road<sup>1</sup> at the southern extent of Kirklevington has also been drawn to my attention. It would secure a more regular bus service to and from Yarm, Stockton and Thornaby for a period of five years upon occupation of the 60<sup>th</sup> dwelling of that development and would provide a retail shop or shops after the 100<sup>th</sup> dwelling. However, during my visit, I observed that the development had yet to commence and therefore, there is no certainty that those services would come forward at the present time. As a consequence, the public transport links to neighbouring villages are currently limited. It is, therefore, reasonable that reliance upon use of a private car would be necessary to access some local services and facilities, with the extent of reliance influenced by the suitability of opportunities for walking and cycling.
  13. The development would have continuous highway and footway links to Yarm via Braeside, Forest Lane and Thirsk Road. Some sections of the footway are relatively narrow, due to overgrown boundary hedges and vegetation. However, there is no substantive evidence before me of accidents involving pedestrians and the Council retains powers under other legislation to cut or fell vegetation if it would endanger or obstruct the passage of vehicles or pedestrians. Based upon my observations, I am, therefore, satisfied that the facilities and services in Yarm would be within a reasonable distance with footways and highways between that would enable accessibility via walking and cycling. The site would also be within cycling distance of employment opportunities at Durham Lane, Eaglescliffe and Teesside Industrial Estate.
  14. Nonetheless, given the presence of unlit sections of the above routes and the distances involved, it is reasonable that future occupiers of the development would be more likely to regularly access services and facilities in Yarm and elsewhere via use of a car, particularly during periods of darkness, in inclement weather or when carrying shopping or bulky goods at times when the Community Bus Service is not available. As the development does not include

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<sup>1</sup> Council ref: 15/1643/OUT

any proposals to improve accessibility and transport choice, it is, therefore, contrary to the aims of Policy CS2 of the CS.

15. In reaching the above findings, I have taken account of other developments that have been drawn to my attention where the Council have resolved to grant planning permission in Kirklevington, including a full planning permission for 19 residential dwellings at land at 24 Forest Lane<sup>2</sup> and an outline application for 3 dwellings at land off Springfield Grove<sup>3</sup>. However, the full details of the circumstances in which those developments were accepted are not before me and in any case, I necessarily consider the proposal on its own merits. In that respect, other relevant factors relative to the planning balance are considered separately as part of the subsequent main issue and other matters.
16. A previous appeal decision<sup>4</sup> in Maltby has also been drawn to my attention. The Inspector in that case found that, in circumstances where the Council could not demonstrate a five year housing land supply, that the shortcomings in terms of accessibility of services and sustainable transport were outweighed by other considerations. Whilst the locational circumstances of that development are different to the proposal before me, it is reasonable to follow a similar approach in considering whether there are other considerations relevant to the main issue.
17. I have found that there is conflict with Saved Policy EN13 of the LP and Policy CS2 of the CS and the associated objectives relating to the location of housing and the protection of the countryside. However, in order to boost significantly the supply of housing, paragraph 47 of the National Planning Policy Framework (the Framework) requires local planning authorities to identify and update a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. Footnote 11 of paragraph 47 of the Framework states that to be considered deliverable, sites should be available now, offer a suitable location for development, and be achievable to ensure that housing will be delivered on site within five years.
18. The Council has identified that it considers that it can now demonstrate a five year housing land supply as part of the Stockton-on-Tees Publication Draft Local Plan (September 2017) which has been submitted for Examination in Public. However, as the objectively assessed need and housing land supply upon which the policies of the Emerging Local Plan are based have yet to be tested and are subject to unresolved objections, the Council has not sought to rely upon it and have indicated that paragraph 14 of the Framework should be applied. I have no reason to take a different view and consider that such an approach should necessarily apply to this appeal, given that I can afford little weight to the Emerging Local Plan in current circumstances.
19. Having regard to all of the above, I conclude that the development would conflict with Saved Policy EN13 of the LP and Policies CS2 and CS10 of the CS in terms of their objectives relating to the location and supply of housing. However, the restrictions in those policies are not consistent with national policy objectives in the Framework to boost significantly the supply of housing in circumstances where a deliverable five-year supply of housing land has not been demonstrated and therefore, the policies are not up-to-date. In that

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<sup>2</sup> Council ref: 17/0224/FUL - Full planning permission granted, subject to Section 106 - 16 August 2017

<sup>3</sup> Council ref: 17/0793/FUL - Outline planning permission granted, subject to Section 106 - 16 August 2017

<sup>4</sup> Appeal ref: APP/H0738/W/18/3160786 - Reivax, High Lane, Maltby - Allowed with Conditions - 12 January 2017

respect, to conclude on the compliance of the proposal with the development plan and the Framework as a whole as part of the planning balance, it is necessary to firstly consider the other main issue and then any other matters that are relevant to the assessment of the proposal.

*Living environment – future occupiers*

20. The Council and local residents have raised concerns that, due to the close proximity of the development to the existing sewage treatment works, future occupiers of the new dwellings would be subjected to unpleasant noise and odours. In that respect, based on the evidence before me, the sewage treatment works has been in place for a number of years and existing dwellings facing Braeside and Ash Grove have co-existed with it. Whilst some references are made in the evidence to complaints having been previously made to the Council in terms of noise and odours from the sewage treatment works, there is no evidence that any adverse effects upon those properties have been substantiated or have necessitated the operators, Northumbrian Water, to undertake mitigation measures.
21. Notwithstanding the above, the majority of the site lies closer to the sewage treatment works and whilst Northumbrian Water has not specifically objected to the proposal, it is acknowledged that daily operations at the works produce odours and noise. In that respect, the illustrative layout indicates that two plots (Plots 6 and 8) would adjoin the boundary with the sewage treatment works. Whilst an alternative layout could be provided at reserved matters stage, it is reasonable that given the scale of development proposed and the configuration of the site that some dwellings and their outdoor amenity spaces would be sited very close to the shared boundary.
22. With regard to the odour concerns specifically, the appellant has provided an odour assessment which is a material consideration to which I attribute significant weight. Consequently, I do not set aside its conclusions or the absence of objection from the Council's Environmental Health officers lightly. However, in the particular circumstances of this case, it is evident that the proximity of the development to the sewage works would provide a highly effective pathway for odours which due to the limited distance would not be dispersed or diluted for dwellings or outdoor amenity areas immediately adjacent.
23. In that respect, the evidence of prevailing winds over a 5-year period at a monitoring station within approximately 6km suggests that the site would be upwind of the sewage treatment works for the majority of the time which would reduce the odour potential. Nonetheless, the future occupiers in very close proximity to the site would be highly sensitive receptors and to my mind, the wind direction and speeds during approximately 10% of the year would result in a significant risk of exposure to odours and reflects a potential frequency of occurrence that would have an unacceptable impact upon their living conditions. The harmful effect would be particularly apparent in periods of warm weather when occupiers of dwellings would likely want to have windows open or when using outdoor amenity areas close to the shared boundary. There is no evidence before me that the harm could be suitably mitigated due to the limited separation distances involved.
24. In reaching the above findings, I have taken into account that the majority of the existing system within the sewage treatment works is within enclosed

units, with only inlet and storm tanks that are open and gridded. I also note that the system is fitted with an alarm if levels reach a certain point following excess rainwater/storm water entering the system to alert Northumbrian Water. Nonetheless, the management of such a system is reactive and would not mitigate the possibility of significant odour releases taking place with a resultant harmful effect upon occupiers of the proposed dwellings and their amenity areas in close proximity.

25. Turning to the matter of noise, the appellant has also submitted a noise impact assessment to which the Council's Environmental Health officers offered no objection or contrary evidence. Based upon the evidence and observations during my visit, I have no reason to take a different view that the rating level associated with the fixed plant items within the existing sewage treatment works fall below daytime background sound levels. I am also satisfied that associated traffic movements are limited and the rating level of fixed plant items at night-time at nearby dwellings would not exceed background sound levels, and therefore, noise levels would fall below those which are likely to cause night-time disturbance. Whilst the evidence before me indicates that the alarm system at the sewage treatment works is audible beyond the site and can occur during the night, to my mind, the infrequency of such events would not result in levels of noise and disturbance that would harm the quality of life of future residents. I am, therefore, satisfied that the relationship with the existing sewage treatment works would not have an unacceptable effect with respect to noise. However, the absence of concern in that respect does not override the harm identified with respect to potential exposure to odours.
26. With regard to the above, the Council have not drawn my attention to any conflict with specific policies of the development plan. Nonetheless, one of the core principles of the Framework is that planning should seek to secure a high quality of design and a good standard of amenity for all future occupiers of land and buildings. The Framework also states that to prevent unacceptable risk from pollution, planning decisions should ensure that new development is appropriate for its location. Based on my findings, the close proximity of the sewage treatment works to the proposed dwellings, the majority of which would all be nearer than existing residential properties, and the effect of odour specifically in that respect would not provide the good standard of amenity for future occupiers of the development as required by the Framework.
27. I conclude that the development would fail to provide a suitable living environment for future residents, given the proximity of the site adjacent to the sewage treatment works and the potential exposure to odours. As previously set out, the proposal conflicts with the Framework in that respect.

## **Other Matters**

### *Housing contribution, including affordable housing*

28. There would be economic and social benefits arising from the provision of up to 10 additional homes including the potential for delivery of 2 affordable homes and bungalows to meet local needs, which are important considerations that carry significant weight. In that respect, the proposal would positively contribute to a need for more market and affordable housing to be delivered in Stockton-on-Tees. There would also be associated economic benefits in terms of job creation during construction and support for local services and facilities in Kirklevington and other villages nearby such as Yarm once occupied. To my

mind, those benefits offset the impact arising from some reliance upon use of a private car for relatively short journeys.

*Highway and pedestrian safety*

29. The effect of the proposal on highway and pedestrian safety is not a matter contested by the Council. The Framework advises that development should only be prevented where the residual cumulative impacts are severe. The highway authority is satisfied that the additional traffic arising from the development could be accommodated on Braeside and the surrounding highway network within Kirklevington without a severe impact. This would be subject to certain measures, such as the formation of the new access following the demolition of No 18A and mitigation of the cumulative effects of local development to be provided by others at the A19/A67 Crathorne interchange and the A67/A1044 /Green Lane Roundabout or a contribution from the development to those works.
30. The Council and the highway authority also raised no objection with respect to the proposed access and its layout subject to alterations to Braeside that could be secured by a Section 278 agreement. Based on the evidence before me and my observations, I have no reason to take a different view and consider that the proposal would ensure that safe and suitable access to the site can be achieved for all people. The illustrative layout indicates that appropriate parking provision to serve each dwelling could be provided and in any case, such details could necessarily be addressed at reserved matters stage.
31. In reaching the above findings I have taken into account the concerns expressed by interested parties in terms of the narrow width of footpaths along sections of Forest Lane and Pump Lane close to the primary school. However, the development would not increase traffic flows on those roads to an extent that existing highway conditions would be substantially altered or pedestrian safety would be compromised. The development, therefore, would not have a detrimental impact upon highway or pedestrian safety.

*Living conditions - neighbours*

32. The illustrative material submitted with the planning application demonstrate that adequate separation distances to neighbouring properties facing Braeside and Ash Grove could be achieved to preserve the living conditions of their occupiers and future occupiers of the development in terms of outlook, light and privacy. Existing views from the rear elevations and rear gardens of the adjoining properties would be affected by the development. However, that is generally the case with development on the edge of an existing settlement. A well-designed and appropriately landscaped development would be capable of limiting the perception of the site being suburbanised, whilst providing a suitable outlook for occupiers of neighbouring properties around the site. I am satisfied that the detailed issues in those respects could be appropriately addressed through the reserved matters relating to appearance, landscaping, layout and scale, taking account of the variations in topography.
33. The proposed access road between Nos. 16 and 18 would increase the noise and activity experienced by occupiers of those properties. However, I do not consider that the extent of those effects would result in significant harm or disturbance to their existing living conditions. In reaching that view, I have taken into account that potential mitigation measures could be provided at

reserved matters stage or by condition, such as appropriate use of land levels for the access relative to surrounding properties, additional landscaping buffers and acoustic fencing. The construction phase could also be suitably controlled to prevent unacceptable impacts in terms of noise and disturbance through the agreement of a Construction Method Statement.

### *Ecology*

34. The Preliminary Ecological Appraisal submitted with the application found no substantive evidence of any protected species within the site or the surrounding area that would be adversely affected by the development. Based upon the evidence before me, I have no reason to take a different view. The existing buildings have roosting opportunities for bats and the remainder of the site and trees have some suitable habitats for nesting birds and small mammals. However, I am satisfied that compensatory landscape planting and recommended mitigation measures would be suitable and could be secured through conditions and the detailed site layout and landscaping submissions as part of a reserved matters submission. I, therefore, find that the development would not have an adverse impact upon ecology and biodiversity.

### *Drainage and flood risk*

35. The development would not be at unacceptable risk of flooding or increase the risk of flooding to surrounding properties, subject to the suitability of a detailed site layout as part of any subsequent reserved matters application, together with foul and surface water drainage measures. Those drainage details are capable of being secured by conditions should the appeal be allowed.

### *Archaeology*

36. An assessment accompanying the application found that the development is of low archaeological potential. Based upon the evidence before me, I have no reason to take a different view and there would be no harm in that respect.

### *Planning obligation and infrastructure*

37. There is a signed and completed UU. It includes obligations relating to affordable housing, education, highways and open space. Based on the evidence before me, the proposed contributions are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development in accordance with CIL Regulation 122 and paragraph 204 of the Framework, given the precise financial contributions would be dependent upon calculations relative to the details that would come forward as part of the reserved matters. I have, therefore, attached weight to them in my decision.
38. The illustrative layout indicates that the development could provide a necessary easement to accommodate the sewer that runs across part of the northern section of the site. During my visit, I also observed that overhead lines cross part of the site. However, there is no evidence before me that a suitable relationship to the overhead lines could not be achieved via a reserved matters submission if the appeal were allowed.

### **Planning Balance**

39. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance

with Saved Policy EN13 of the LP and Policy CS2 of the CS in terms of their objectives relating to the location and supply of housing and the protection of the countryside. I have also found that the development would fail to provide for a suitable living environment for future residents, given the proximity of the site to the sewage treatment works and the potential exposure to odours. Proposed development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In that respect, the relevant policies for the location and supply of housing are out-of-date through the operation of paragraph 49 and 215 of the Framework.

40. Paragraph 14 of the Framework states that for decision making the presumption in favour of sustainable development means where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
41. With regard to the above, the economic and social benefits associated with the provision of up to 10 new homes including the potential for 2 affordable homes, together with support for local services and facilities in the village and those nearby, carries significant weight. In contrast, the development would result in a loss of open countryside with a significant proportion of the site not having been previously developed. Nonetheless, given that the site is mostly enclosed by development with varied topography, I have found no significant harm to the character and appearance of the area, landscape character and visual amenity, including views from neighbouring properties, subject to the details of the reserved matters should the appeal be allowed. There would also be no unacceptable impact in terms of highway and pedestrian safety, the living environment for future residents, ecology, trees, drainage and contamination that could not be resolved by conditions.
42. Notwithstanding the above, in the particular circumstances of this case, the harm arising from the failure of the development to provide a suitable living environment for future residents due to the proximity to the sewage treatment works and the potential exposure to odours, is considerable and overriding.
43. Having regard to the above, the adverse impacts of allowing this appeal would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. The proposal, therefore, does not constitute sustainable development, and the material considerations do not indicate that the proposal should be determined otherwise than in accordance with the development plan.

### **Conclusion**

44. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

*Gareth Wildgoose*

INSPECTOR