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## Appeal Decision

Hearing Held 25 January and 8 March 2022

Site visit made 27 January 2022

**by Helen Heward BSc (Hons) MRTPI**

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

**Decision date: 7<sup>th</sup> April 2022**

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### **Appeal Ref: APP/X1355/W/21/3286140** **Land North of Braeside Edmondsley**

- 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 Stuart Smith against the decision of Durham County Council.
  - The application Ref DM20/01910/OUT, dated 16 July 2020, was refused by notice dated 4 May 2021.
  - The development proposed is construction of up to 171 dwellings, community hub and associated parking, school drop off/pick up car parking area, construction of new access from the B6532, provision of a 'SuDS' pond, associated infrastructure, and landscaping.
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### **Decision**

1. The Appeal is dismissed.

### **Procedural Matters**

2. The application was made in outline with all matters reserved except for the means of access. The Council refused the application for five reasons. The Inspectorate determined that the appeal be dealt with under a 'hybrid process'. Evidence for Reasons for Refusal (RfR) 2-5 to be submitted by written representations and RfR 1 to be dealt with at the hearing. The parties agreed.
3. A signed Statement of Common Ground (SoCG) dated 14 December 2021 indicated that matters were still outstanding in relation to RfR 2-5. At the hearing on 25 January 2022 the Council provided an update of what was required for each issue and the Appellant responded. Both parties were confident that issues could still be resolved.
4. Whilst the submission of new evidence at such a late stage would not normally be allowed, given the decision that the appeal be dealt with as a hybrid case I agreed to allow the submission of more evidence on these issues. It was subject to consultation procedures to ensure that the Wheatcroft Principles would be satisfied, and requirements that any new information, together with a supplementary SoCG to deal with RfR 2-5 would be submitted by 4 March before the Hearing reconvened on 8 March. The only matters heard in full on 25 January were those relating to RfR 1 and benefits of the proposed scheme.
5. The Appellant submitted additional information relating to highways, drainage, and minerals on 4 February. A Draft Addendum SoCG, updated s106 agreement and an agreement under s39 of the Wildlife and Countryside Act (W&CA) 1981 were submitted 7 March. A Biodiversity Net Gain Assessment

- and correctly labelled highways drawings were submitted 8 March. All were consistent with the agreement for the adjournment and were accepted.
6. Matters were still unresolved in relation to mitigating potential indirect impacts upon off-site Congburn Wood Ancient Woodland and Waldrige Fell Site of Special Scientific Interest (SSSI). The Appellant requested a further adjournment. Appeal cases should not be put into abeyance unless there are exceptional reasons. The usual practice is to resist postponements and adjournments in view of the delay and disruption this causes. One adjournment and submission of new evidence had already been allowed in relation to the 'combined procedure' process.
  7. The proposals were at an early stage. The parties were unable to confirm that all of the land likely to be affected was within the control of the Appellant or Council. Consultations would likely be required. The Council was not supportive of further delay and I declined the request.
  8. However, I did allow the Appellant to submit revised documents to remedy minor errors in relation to biodiversity net gains to off set on-site impacts. I agreed that these should not be a barrier to the appeal being allowed if I were to find all other issues acceptable. This information was provided 29 March and the hearing closed in writing on 30 March.

### **Main Issues**

9. The main issues are:
  - (1) the likely effects of the scale and location of the proposed development upon the setting, built form and character of the settlement of Edmondsley and the character and quality of the landscape.
  - (2) the likely potential for adverse effects on an SSSI and Ancient Woodland, including whether there is evidence to show that effects could be satisfactorily avoided, mitigated or as a last resort compensated.

### **Reasons**

*The likely effects of scale and location of the proposed development upon the setting, built form and character of the settlement of Edmondsley and upon character and quality of the landscape*

10. The West Durham Coalfield is a varied and settled landscape, with a great variety of settlement sizes and some large, disturbed areas, including mining and industrial development. The quality is mixed. Built form is never far away. The undulating topography affords many opportunities for views of settlement and development is often seen on ridges and slopes.
11. The West Durham Coalfield Area of Higher Landscape Value (AHLV) broadly covers landscapes in good condition and scenic value. Following the County Durham Local Landscape Designations Review 2019 (LDR), the AHLV was extended in the County Durham Plan (CDP) to include areas with elevated values, including parts of the Congburn valley and the appeal site. The Appellant agrees that the AHLV is a valued landscape for the purpose of paragraph 174 of the National Planning Policy Framework (the Framework).
12. In the County Durham Landscape Value Assessment 2019 (LVA) the site is located within the large scale BLT8 Coalfield Valley Broad Landscape Type and

- within the Broad Character Area (BCA) 8e Cong Burn Valley. This is a well-defined valley lying between high ridges in with a narrow steep sided dene lined with ancient oak woods. The condition, scenic quality, rarity, and representativeness are all rated as being of medium high value.
13. Edmondsley is in an elevated situation on the upper slopes of a valley, close to a ridge. It is a former colliery village with compact terraced housing. On my site visit I found that settlement in the Cong Burn Valley BCA , including Holmside and Edmondsley is relatively small in scale and not so heavily affected by mining as some other areas of the Coalfield Valley.
  14. Even though Edmondsley is larger than Holmside, I found it to be quite compact, forming a 'squarish' settlement, save for some low-density small-scale development here and there. The northern edge of residential development at Braeside appears consistent with that of Edmondsley Primary school on the opposite side of the road. They represent the extent of the village. Development does not appear to extend far down the north facing slopes. A noticeable tract of the lower valley is visible.
  15. The appeal site abuts the northern edge of Braeside, but appears to be more than twice as wide. There is some mixed development straggling further west but the appeal site appears to be largely bounded by fields and woodlands save for housing at Braeside and the B6532 to the east.
  16. The site sits 'below' the village on a north facing slope which falls away toward the wooded Congburn dene. Edmondsley Colliery closed, and the appeal site was reclaimed long ago. The previous disturbed landscape is no longer apparent save for the loss of some historical field boundaries. This is not a noticeable detractor.
  17. In the LVA the Durham Local Landscape Type (LLT) of the site and land to the east of the road is noted as valley farmland: wooded arable. The appeal site is seen in the present landscape as an open arable field on the lower slope of the valley and separates the wood running through the valley bottom from the settlement on higher ground.
  18. On the eastern side of the road there are more fields and a large garden/plant nursery, not unlike many one finds in the countryside. It is separated from the School to the south by a field. I did not find the garden centre to have the character and/or appearance of development within the village.
  19. Development has taken place over time. The proposal would represent an increase of roughly 80% above the number of existing dwellings. Previous developments represented similar percentage increases in the village size. Nonetheless, up to 171 dwellings would represent a large extension. An illustrative layout suggests it would form a large area of housing, sitting to the north and west of the village, and only partially attached to it.
  20. I do not share the Appellant's opinion that the proposal would represent a natural rounding-off of the village. On the contrary, I find that the scale and siting of the development would be out of keeping with, and not well related to, existing settlement form and pattern.
  21. In the available views the housing would be seen to extend the settlement down the north facing slope and into the undeveloped lower valley. The situation on the lower slope would make development more incongruent, not

- less. Landscape planting to the southern and eastern boundaries could hide or filter views and soften visual impacts, but would not change the fundamental scale of the development or its poor physical relationship to the village.
22. There is a mix of housing typologies and street layouts. Settlements grow. With each extension they change. Settings, views, and character can all change. There would be no perceptible narrowing of gaps between settlements. There wouldn't be a noticeable change in the pattern of the broad scale of built form and settlement in the Coalfield Valley, but it would be a significant change in relation to Edmondsley and the Cong Burn Valley BCA.
23. The Appellant accepts that the proposal is not within the built-up area but argued it is on the edge of the village and not outside of it. However the Local Plan<sup>1</sup> defines the built-up area as land contained within the main body of existing built development of a settlement or within a settlement boundary defined in a Neighbourhood Plan (NP). Areas falling outside this definition will be regarded as countryside. There is no NP here and I found the site to be clearly beyond and outside of the main built-up area and body of Edmondsley.
24. The wider visibility of the site is broadly limited to an arc of higher ground roughly from Burnhope round to Hett Hills on the northern side of the Cong Burn Valley BCA. They are limited to a range of up to 2km approximately. In this way the site makes a limited contribution to the scenic value, rarity, and representativeness of the AHLV as a whole, which covers a much larger area.
25. Nonetheless, the available views include wooded valleys; one of the distinctive characteristics of the ALHV and the scenic quality of the Congburn valley can be appreciated. In several of the views the appeal site is seen as part of the lower north facing valley side sitting alongside the wooded valley and contributes to the 'tapestry' of the landscape. Overall I found the appeal site makes a positive contribution to the qualities of the landscape of the Cong Burn Valley BCA and the AHLV in this area.
26. At the hearing the Appellant's landscape witness conceded that the value of the appeal site might not be low. I find the Council's assessment of a medium landscape value at the site level to be more reasonable. There was not a great deal of difference between the Council and the Appellant as to the value of the Cong Burn Valley BCA. The Appellant's assessed it as medium and the Council as medium/high. The LVIA had been prepared before the Council had designated the extended area of the AHLV which now includes the appeal site. This was one reason for the Appellant's assessment.
27. In views from high ground near Burnhope the site can be seen 'down the valley' with built form on higher ground at Chester Le Street beyond and at some distance from the appeal site. From other viewpoints existing development would be seen just beyond the proposed development. But none of this would mitigate the visual impact of the extension of housing down the slope, almost to the valley floor and into undeveloped countryside.
28. A woodland buffer at the northern end of the site would be at the lowest point and would do little to mitigate the views from further north. Trees within development would do little more than break up the roofscape. The large residential development site would still be very much apparent.

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<sup>1</sup> County Durham Plan Glossary

29. Development resulting in a loss of farmland, the incursion of housing in the lower valley abutting woodland would detract from the distinctive characteristics of the Cong Burn Valley BCA. The magnitude of change on the site, and in the area of the Congburn valley surrounding the site, would be high. The magnitude of change within the AHLV would become less with distance. Landscaping would not fully mitigate the impact up to 171 dwellings.
30. The Appellant's landscape witness agreed with the conclusions of the LVIA that the effect on the Cong Burn Valley BCA would initially be moderate adverse. I agree. Within that part of the AHLV where the site would be experienced the effect would be similar. Some harms would lessen over time.
31. However CDP Policy 39 states that development affecting an AHLV will only be allowed where it conserves, and where appropriate enhances, the special character of the AHLV. The Appellant's landscape witness agreed that there would be some harm to the special qualities of the AHLV, albeit that he considered that the impacts would be localised and limited.
32. The AHLV is quite narrow in the vicinity of the appeal site. The LDR recognises that some localised parts do not have particularly elevated values, although some form part of wider tracts of landscape of good scenic quality. But arguments that the site should not have been included within the AHLV were matters for the local plan examination.
33. At Holmside and Waldrige woodland can be found running into the built-up area and residential development. The Appellant drew my attention to other decisions. They illustrate that housing on the edge of settlements, close to woodland and within AHLV's can be allowed.
34. I note that in the most recent case cited, DM20/03070/OUT, the Appellant accepts<sup>2</sup> that the Council found the proposal to represent a logical extension of existing built form, appropriate to the form and setting of the settlement. I have come to a different conclusion in this case. There could be other aspects of the cases put to me that differentiate them from this appeal, I know little of the details. I also note that some decisions predate the adoption of the CDP and Framework. I have assessed the appeal proposal on its own merits.
35. I conclude that the proposed development would be within countryside. It would be outside of the main body and built-up area of Edmondsley, and not well related to the settlement in terms of scale, location, form and setting. It would be harmful to the character and quality of the landscape and fail to conserve identified distinctive characteristics of the AHLV.
36. The proposal is contrary to provisions of CDP Policies 6, 10 and 29a. which provide that development in the countryside will not be permitted unless allowed for by specific policies, including amongst other things, development on unallocated sites which are not allocated in the Plan or in a Neighbourhood Plan which are either (i) within the built-up area; or (ii) outside the built-up area (except where a settlement boundary has been defined in a neighbourhood plan) but well-related to a settlement, and achieve well designed buildings and places and contribute positively to an area's character.
37. The proposal would fail to satisfy CDP Policy 39 which requires new development not to cause unacceptable harm to the character, quality, or

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<sup>2</sup> Paragraph 7.1.13 Wardell Armstrong Appeal Statement of Case (Landscape)

distinctiveness of the landscape, or to important features or views. CDP Policy 39 also requires development affecting AHLV's to conserve, and where appropriate enhance, the special qualities of the landscape, unless the benefits of development in that location clearly outweigh the harm. I consider the benefits of development later.

38. The proposal would fail to satisfy advice included at paragraph 174 a) of the Framework that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, in a manner commensurate with their statutory status or identified quality in the development plan.

#### *Biodiversity and nature conservation*

39. A completed DEFRA Metric 3 and Biodiversity Scheme and Management Plan demonstrated that the on-site effect of development on the biodiversity value of the site could be mitigated and compensated for. Measures would include scrub, grassland, hedgerow, and management of an area of Ancient Woodland adjacent to the appeal site. The proposals would be secured by an agreement under s39 of the W&CA 1981. The Council's Ecologist agreed that the evidence demonstrated that the proposals would result in a net gain in biodiversity units of 401.58%.
40. A revised s39 agreement, Biodiversity Scheme and Management Plan and legal documents submitted 29 March remedied minor errors in earlier drafts including identifying the off-site land and including provisions to ensure that the requirements would remain even if the land was to be sold within the 30-year term of the agreement. I am satisfied that the provisions would mitigate and compensate the effect of development on the biodiversity value of the appeal site.
41. I now consider likely off-site impacts. CDP Policy 43 states that all development proposals which are likely to adversely impact upon an SSSI will only be permitted where the benefits of development in that location clearly outweigh the impacts on the features of interest on the site and any wider impacts on the network of sites.
42. It is broadly consistent with advice at Paragraph 180b) of the Framework that development on land within or outside a SSSI and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSI's.
43. An SSSI at Waldrige Fell is roughly 800m distance from the appeal site. Waldrige Fell is of importance as the only lowland site in County Durham where semi-natural vegetation is widely developed over acidic substrates. It includes a range of heathland, grassland, wetland, and woodland habitats, several of which are rare or absent in the rest of the County. The extensive area of lowland heath with a variety of walking options affords opportunities for open and panoramic views and is a popular recreational area.
44. The Council explained that people drive from far and wide, and the popularity of Waldrige Fell as a dog walking area was a concern of the manager of the

- site. It is only a few minutes' drive from the appeal site. Whilst not many of the future occupants of the proposed dwellings would be likely to walk to the SSSI, it is likely that some would drive. The Appellant agrees that development would be likely to result in a small increase in recreational pressure on the SSSI including from dog walkers, and I do too.
45. Congburn Wood Ancient Woodland directly adjoins the appeal site to the north and west. There is no formal access from the appeal site but a number of trod paths lead into the woodland. The Appellant proposed a planning condition requiring new boundary treatments and hedgerow planting to prevent access. However, Edmondsley Wood just west of the appeal site is also part of the Ancient Woodland and the parties agreed that it is publicly accessible.
46. The Appellant agrees that there is a need to mitigate indirect adverse impacts upon the SSSI and Ancient Woodland arising from recreational activity including dog walking. An initial plan for a financial contribution to the management of Waldrige Fell had been found unsuitable. Another scheme was being considered to direct walkers to footpaths in coniferous woodland within Sacriston Wood. The proposal was at an early stage.
47. There is a public footpath along the southern boundary of the appeal site, and existing public footpaths go up into the wood, but there is an area between the site and the woodland where the Council was not certain about public access. The parties had not got so far as confirming a route or drafting documentation.
48. I declined a request for a further adjournment. There were no legal measures to secure the scheme and the parties agreed that it could not reasonably be secured by a planning condition because of the uncertainty, including from consultations that may be required. I agree and find the provisions far too vague and lacking in certainty.
49. Indirect impacts arising from increased recreational activity would be likely to cause harm within Congburn Wood Ancient Woodland and Waldrige Fell SSSI. As such the proposal fails to satisfy requirements of CDP Policies 40 and 41 and similar advice at paragraph 180c) of the Framework that proposals for new development resulting in the loss or deterioration of ancient woodlands or irreplaceable habitat(s) will not be permitted unless there are wholly exceptional reasons and a suitable compensation strategy exists (my emphasis). As no suitable strategy is in place the appeal must fail.

## **Other Matters**

### *Highways*

50. The site takes access off a busy link road between Stanley and Durham. As an outline application it was not certain what the frontage development would be. The road is derestricted in the vicinity of the access. Although there is a lit 30mph zone to the south the Council advised that the 85% recorded speed within the 30mph zone was 38mph. The Council did not consider that speed restrictions alone would be sufficient, gateway features needed to be more substantial and the proposed engineering layout and tapers submitted should reflect the recorded speeds.
51. Updated access drawings submitted 4 February indicating proposed TRO and right turn revisions. Errors in the keys to the plans were corrected and plans resubmitted on 8 March. At the reconvened hearing the Council confirmed that

the proposals on these drawings would satisfactorily overcome RfR 2. There is no evidence before me to the contrary and I agree that the drawings indicate that safe and satisfactory access can be provided. Provisions could be secured by way of a pre-commencement of development condition requiring further details to be submitted.

52. As amended the proposed development would accord with CDP Policy 21 which requires that the transport implications of development must be addressed as part of any planning application, and advice in paragraphs 110 and 111 of the Framework that in assessing specific applications for development planning authorities should be ensured that safe and suitable access to the site can be achieved for all users.

#### *Sustainable drainage*

53. Insufficient information had been submitted to demonstrate that the development would be served by an appropriate Sustainable Drainage System (SuDS). On 4 February the Appellant submitted a Sustainable Drainage Systems Design Statement and a SuDS Maintenance Schedule<sup>3</sup>.
54. On 8 March the Council confirmed that they were satisfied that the Appellant had now demonstrated that the proposed development could be served by appropriate SuDS measures. There is no evidence to the contrary, and a planning condition could be imposed to secure the details.
55. The amended proposals satisfy requirements of CDP Policy 35 that all development proposals will be required to consider the effect of the proposed development on flood risk, both on-site and off-site, commensurate with the scale and impact of the development and taking into account the predicted impacts of climate change for the lifetime of the proposal. They also satisfy advice at paragraph 167 of the Framework for suitable sustainable drainage.

#### *Mineral safeguarding*

56. A report submitted 4 February on the potential for exploitable coal resource beneath the appeal site concluded that "*any remaining coal across the site is no longer of any current or potential value as it does not represent an economically viable and therefore exploitable resource.*"
57. The Council was satisfied that the Appellant had provided sufficient information to demonstrate that the proposed development would not prejudice any potential future extraction of remaining coal beneath the site. I agree and find the requirements of CDP Policy and paragraph 211 of the Framework to safeguard mineral resources have been satisfied.

### **Benefits**

58. The CDP identifies a minimum net additional housing requirement of 24,852 dwellings over the plan period. The proposal would deliver up to 171 dwellings, including housing for older persons and 20% affordable housing. The location is accessible to employment at Chester-Le-Street and beyond. The Council has over six years housing land supply and the CDP Spatial Strategy seeks to put major development in the most sustainable settlements. Nonetheless, the

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<sup>3</sup> Wardell Armstrong 2 February 2022 NT15612 Report No 2 Version VO.1 FINAL and Wardell Armstrong February 2022 NT15612 Report 0003 Version A FINAL



housing requirement is not a ceiling, the CDP makes provision for windfall allowances and CDP Policy 6 provides for unallocated sites.

59. Paragraph 60 of the Framework states that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
60. Development would bring local economic benefits during the construction phase and from the future occupiers. Edmondsley has some facilities to meet day-to-day needs and is not far from settlements with a greater level of service provision. Future occupiers would support local facilities and might increase demand for services such as public transport.
61. I attach a moderate amount of weight in favour of the delivery of new housing and the socio-economic benefits.
62. The development includes a new community hub building with a flexible community space that could also provide a coffee shop or other facility, and parking which could be used during school pick-up and drop-off times. There is little evidence of need for a new building or support from the Parish Council or community. Whilst the Parish Council supported additional parking there is little evidence that the Highway or Education Authorities consider additional parking necessary to resolve congestion or parking problems. I attach no weight to these matters.
63. The scheme would have a community play area, landscaping, biodiversity, and ecological infrastructure. But these are all components that are to be expected as part of good planning and necessary to make development acceptable. Similarly highway improvements and contributions towards healthcare and education services would be necessary to facilitate and support the development, and in this way are not benefits.

### **Other Matters**

64. The Appellant was dissatisfied with the Council's handling of the planning application. However those matters are not relevant to my considerations in this appeal decision.
65. The Council had regard to a previous proposal submitted to a Design Review Panel. I am considering what is before me only and the Council agreed that the street layout is not for determination.

### **Conclusions**

66. Development would be within the countryside, not within the main body and built-up area of Edmondsley. It would not be well related to the scale, form and setting of the settlement. Development would be harmful to the character and quality of the landscape and fail to conserve identified distinctive characteristics of the AHLV. These harms weigh heavily against the proposal.
67. Whilst I attach a moderate amount of weight in favour of the delivery of housing and the economic and social benefits of the scheme they do not individually or collectively outweigh the harm to the character, quality or

distinctiveness of the landscape, and the failure to conserve special qualities of the AHLV.

68. The proposal is contrary to provisions of CDP Policies 6, 10, and 29a. and 39 and would fail to satisfy advice included at paragraph 174 a) of the Framework that planning decisions should protect and enhance valued landscapes, in a manner commensurate with their statutory status or identified quality in the development plan.
69. Indirect impacts arising from increased recreational activity would be likely to cause harm within Congburn Wood Ancient Woodland and irreplaceable habitat. CDP Policies 40 and 41, and advice in the Framework is that there must be a suitable compensation strategy in place. There is not. Therefore, even if the benefits of the scheme in this location amounted to wholly exceptional reasons and outweighed the likely indirect impacts to Waldrige Fell SSSI and Congburn Wood Ancient Woodland, and the harm to the special qualities of the AHLV, the appeal should still not be allowed.

### **Decision**

70. Having regard to all other matters raised, including by the Rt Hon Kevan Jones MP and other interested parties, the appeal is dismissed.

*Helen Heward*

PLANNING INSPECTOR

## **PERSONS APPEARING AT THE HEARING**

25 January:

For the Appellant:

Mark Ketley, Director BH Planning & Design

Adrian Clarke, Technical Director & Landscape Architect Wardell Armstrong

For the Council :

Barry Gavillet, Senior Planning Officer

Henry Jones, Principal Planning Officer

Stuart Carter Senior Policy Officer

Jason McKewon Senior Policy Officer Minerals

Stuart Priestley Principal Ecologist

David Smith Principal Highways Officer Development Management

John Anderson, Area Drainage Engineer

Jed Lawson Principal Landscape Officer

8 March:

For the Appellant:

Mark Ketley, Director BH Planning & Design

For the Council :

Barry Gavillet, Senior Planning Officer,

Jason McKewon Senior Policy Officer Minerals

Stuart Priestley Principal Ecologist

David Smith Principal Highways Officer Development Management

Brian Weatherall Drainage and Coastal Protection Manager Durham County Council