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## Appeal Decision

Site visit made on 20 August 2019

**by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI**

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

**Decision date: 25<sup>th</sup> November 2019**

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### **Appeal Ref: APP/Z4718/W/19/3230042**

### **Land off Cumberworth Lane, Denby Dale HD8 8RU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Wavin Ltd against Kirklees Council.
  - The application Ref 2018/93309, is dated 22 September 2018.
  - The development proposed is for residential development.
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### **Decision**

1. I dismiss this appeal and refuse planning permission for the development sought.

### **Procedural Matters**

2. This is an application for outline planning permission for the construction of 4 no. x 2-storey houses, with all matters reserved for future determination. The accompanying indicative plans show 2 no. houses in the centre part of the site facing each other and 2 no. at the eastern end of the planned road facing west.

### **Main Issues**

3. Having had regard to the statements of the appellant and the Council I have concluded that the main issues in the determination of this appeal are:
  - 1) whether a masterplan is required to secure an efficient form of development; and
  - 2) whether the highway access arrangements will be suitable for the proposed development.

### **Reasons**

4. The appeal site comprises an enclosed paddock, roughly rectangular in shape and measuring 0.47ha in area with access via an unadopted, uneven road to Cumberworth Lane to the west. Included within the site are some small redundant structures along part of the northern boundary and a stretch of drystone wall running north-south roughly bisecting it in two. The site occupies an elevated, south facing position above the town of Denby Dale. It would appear from my inspection that about 2/5 of the main rectangular part is unsuitable for building because of the challenging topography.
5. There are houses fronting Cumberworth Lane on either side of the site access (nos. 5 and 6 Chapel Court). To the north the site adjoins a more extensive

area of open land. The eastern side of the site slopes away quite quickly towards an area of land accessible from Leak Hall Road which, I understand, has planning permission for residential development. Immediately to the south, below the site, are houses, many made of traditional stone, which are accessible from the lower section of Cumberworth Lane and from the A636 Wakefield Road, the main thoroughfare through the town.

### *The Masterplan*

6. At the time that the application was submitted the appeal site was not allocated for any form of development. However, this situation changed on 27 February 2019 when the new Kirklees Local Plan (KLP) was adopted. Under policy HS144 of the KLP the site, together with the more expansive area of open land immediately to the north, was allocated for residential development. This site, referred to as 'Land at Cliff Hill, Leak Hall Crescent, Denby Dale, Huddersfield' measures 3.24ha and has an indicative capacity of 113 no. dwellings.
7. Under policy LP65 of the KLP there is an expectation that sites allocated for housing development will be granted planning permission as long as the proposals accord with the requirements set out for each respective allocation, other relevant development plan policies and any further stipulations identified on the Policies Map.
8. Policy LP5 of the KLP states that masterplans for sites will be sought where they are feasible and appropriate. All relevant stakeholders are to be involved in their preparation prior to submission of a planning application. As part of the justification for the policy (paragraph 6.23) the Council states that it will normally require a masterplan to be submitted where there are multiple land ownerships. For the purposes of completeness, it should be noted that there were no further stipulations on the Policies Map.
9. Since the site HS144 is in multiple ownership one would assume that a masterplan is required. However, in contrast to the wording of the section headed 'other site specific requirements' for housing allocations HS2, HS3, HS11, HS22, HS23, HS47 and HS61 there is no mention within the corresponding section for HS144 of any need for a masterplan. Notably, these other sites are all considerably larger than the appeal site with indicative capacities ranging from 280 no. units (HS47) to 4,000 no. units (HS61).
10. Given that the Council was probably aware of the multiple ownership issue when it allocated the appeal site in its local plan for development it is not unreasonable to assume that it omitted any reference to the need for a masterplan because it considered that one was not necessary. The Council cannot simply interpret its own policy in a way convenient to its own position. Consequently, I do not think that it is correct to hold that the appellant's failure to have collaboratively engaged in drawing up a masterplan constituted a breach of LP5.
11. Moving onto the housing density matter I note that policy LP7 of the KLP stipulates that, where appropriate, developments should achieve at least 35 dwellings per hectare. Notwithstanding the limitations imposed by topography as previously noted it seems that, using the Council's density target and assuming a net developable area of around 0.3ha, the site could accommodate around 10 no. units instead of the proposed 4 no. units.

12. As the Council notes, this is a significant loss of development yield and inconsistent with the need for the effective use of scarce building land. Consequently, I conclude that the appeal proposal breaches policy LP7 of the KLP and find that it is also non-compliant with paragraph 123 c) of the Framework which encourages the efficient use of land where appropriate.

#### *Highway Access Arrangements*

13. In its statement the Council contends that it was envisaged during the local plan examination that the entire HS144 site would be accessed from Leak Hall Lane to the north-east. The Council's highways and transportation officer stated that there was inadequate information within the application on which to make an informed judgment about the suitability of the proposed access arrangement from between nos. 5 and 6 Chapel Court on Cumberworth Lane.
14. Policy LP21 of the KLP requires applicants for planning permission to provide sufficient information to show that new development can be safely accessed by pedestrians and other road users. In its statement the Council indicated that the new access road was not capable of being adopted due to the width restriction between the two Chapel Court properties. It went on to say that a development of more than 4 no. dwellings would require to be served by an adopted road.
15. Due to this width restriction the appellant acknowledges that it would not be possible to incorporate a pavement for pedestrian access to the site from Cumberworth Lane. Instead, the appellant would include a 600mm hard margin on either side of the 5.5m wide road access. Because of the limited space for pedestrians on this hard margin, vehicle speeds onto and within the development would be limited to 15mph and could be secured by condition were other matters acceptable.
16. From my inspection of the site and the associated documents I have arrived at the view that whilst the proposed road might not achieve the standard required for adoption by the Council it would nevertheless provide a safe means of vehicular and pedestrian access to the development subject to the speed restrictions proposed by the appellant. For the record, I am also satisfied that the proposed visibility splays would be satisfactory. Consequently, I find that the proposal is compliant with Policy LP21 of the KLP.

#### **Conclusions**

17. Having considered the findings above I conclude that on balance the proposal is contrary to the development plan. Consequently, I dismiss this appeal and refuse planning permission for the proposed development.

*William Walton*

PLANNING INSPECTOR

