

COMMITTEE REPORT

APPLICATION DETAILS

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| APPLICATION NO: | DM/18/03860/OUT |
| FULL APPLICATION DESCRIPTION: | Erection of 2 dwellings (outline) |
| NAME OF APPLICANT: | Mr S Healer & B Jewitt |
| ADDRESS: | Land to the east of 3 Whitehill Hall Gardens, Chester-le-Street |
| ELECTORAL DIVISION: | Chester-le-Street West Central |
| CASE OFFICER: | Louisa Ollivere Planning Officer Telephone: 03000 264878 louisa.ollivere@durham.gov.uk |

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

- 1.The application relates to an area of flat grassed land within the southern part of a small housing estate of 14 dwellings which were constructed in the 1990s within the former walled garden of Whitehill Hall. The estate lies adjacent to and to the north of a larger 1970's housing estate known locally as the Whitehill Park Estate located in the western area of the Chester-le-Street. The southern boundary of the site contains the last remaining section of wall that formed the walled Garden that served the former Whitehill Hall which has been demolished. The curtilages of residential properties adjoin the site to the south and west. The access road for the housing estate adjoins the site to the north and east. The site is overlooked by residential properties to the north and east.

The Proposal

- 2.The application seeks outline planning permission for the erection of two detached dwellings with all matters reserved.
- 3.This application is reported to Committee upon the request of Councillor Simon Henig due to the loss of visual amenity and previous planning decisions in this location.

PLANNING HISTORY

- 4.The site has a long and chequered planning history spanning approximately 30 years however the following applications are of most relevance to this application:

- 5.EN/18/00894 Enforcement enquiry into erection of 2m high fence (No breach as only fencepost holes dug.)
- 6.2/06/00166/OUT Outline application for construction of two detached dwellings (withdrawn).
- 7.2/06/00333/CLU Certificate of lawfulness for existing use of land for amenity, play and recreational use (Approved).
- 8.05/00505/OUT Outline application for construction of 2 detached dwellings (Approved).
- 9.05/00313/OUT Outline application for proposed construction of 2 detached dwellings (Withdrawn).
- 10.05/00282/OUT Outline application for residential development. This was refused on the ground that it would comprise over development, be out of keeping with the prevailing density and street pattern of the surrounding area, contrary to Chester-Le-Street Local Plan Policy HP9 and that the proposal would result in the loss of mature protected trees from the land which would be detrimental to the visual amenity of the area and contrary to local plan policy.
- 11.2/97/00322/FUL 1 Dwelling with garage (Approved).
- 12.91/00391/FUL Bungalow (Approved).
- 13.2/90/00180/out Outline application for residential development (Approved).

PLANNING POLICY

NATIONAL POLICY

- 14.The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
- 15.The NPPF requires local planning authorities to guide development towards sustainable solutions whilst taking local circumstances into account, to reflect the character, needs and opportunities of each area.
- 16.In accordance with paragraph 213 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.
- 17.The following elements of the NPPF are considered relevant to this proposal;
18. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and

therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.

19. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
20. *NPPF Part 5 - Delivering a sufficient supply of homes.* 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.
21. *NPPF Part 6 - Building a strong, competitive economy.* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
22. *NPPF Part 8 - Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
23. *NPPF Part 9 - Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
24. *NPPF Part 12 - Achieving well-designed places.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
25. *NPPF Part 14 - Meeting the challenge of climate change, flooding and coastal change.* The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
26. *NPPF Part 15 - Conserving and enhancing the natural environment.* The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on

biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate. Amongst other aims decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site to impacts that could arise from the development. Noise should be mitigated and reduced to a minimum potential adverse impact to avoid noise giving rise to significant adverse impacts on health and quality of life. Decisions should ensure that new development can be integrated effectively with existing businesses. Existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development the applicant should be required to provide suitable mitigation.

27. *NPPF Part 16 - Conserving and enhancing the historic environment.* Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

NATIONAL PLANNING PRACTICE GUIDANCE:

28. The newly introduced National Planning Practice Guidance (NPPG) both supports the core government guidance set out in the NPPF, and represents detailed advice, both technical and procedural, having material weight in its own right. The advice is set out in a number of topic headings and is subject to change to reflect the up to date advice of Ministers and Government.

29. *Design* - The importance of good design. Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design, enhancing the quality of buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on wellbeing.

30. *Conserving and Enhancing the Historic Environment* – Explores the terms ‘significance’ and ‘special architectural or historic interest’ and ‘harm’, noting assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.

31. *Open Space, sport and recreational facilities, public rights of way and local green space* - Gives key advice on open space, sports and recreation facilities, public rights of way and the new Local Green Space designation.

32. *Land Stability* - The guidance provides advice to local authorities and developers to ensure that development is appropriately suited to its location, and that there are no unacceptable risks caused by unstable land or subsidence.

33. *Climate change* - Addressing climate change is one of the core land use planning principles which the National Planning Policy Framework expects to underpin both plan-making and decision-taking. Planning can also help increase resilience to climate change impact through the location, mix and design of development. Reflecting the 'golden thread' of the NPPF, sustainable development is key.
34. *Flood Risk and Coastal Change* - The general approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. Application of the sequential approach in the plan-making process, in particular application of the Sequential Test, will help ensure that development can be safely and sustainably delivered, and developers do not waste their time promoting proposals which are inappropriate on flood risk grounds.

LOCAL PLAN POLICY:

35. The following saved policies in the Chester-le-Street Local Plan 2003 are relevant to the consideration of this application.
36. *Policy NE2 – Development beyond settlement boundaries* – outside of settlement limits development will be strictly controlled. Development should protect and enhance the character of the countryside and be consistent with maintaining the economic sustainability of agriculture and other rural businesses.
37. *Policy HP6 - Residential within settlement boundaries* – Proposals for residential development will be permitted within the defined settlement boundaries of a number of listed settlements providing it is classed as previously developed land and meets the general criteria of Policy HP9.
38. *Policy HP9 - Residential Design Criteria (General)* - requires new development to; relate well to the surrounding area in character, setting, density and effect on amenity of adjacent property, to provide an attractive, efficient and safe residential environment, to provide adequate privacy and amenity, safe road access and retain existing landscape features.
39. *Policy HP16 – Enclosure of Open land in Residential Areas* – Requires changes of use or enclosure of public open spaces, landscaping and amenity strips for private residential purpose to have regard to residential amenity, character of the area, the use and location of the land, highways safety, the design and style of means of enclosure.
40. *Policy RL1 Sport and Leisure Opportunities: General* – Requires existing leisure facilities, open spaces and rights of way to be protected and promotes the improvement or creation of new recreation and leisure facilities.
41. *Policy RL3 Protection of Outdoor Recreational Facilities* – development that would result in the loss of amenity open space, playing pitches, courts, greens, parks, allotments and rights of way will not be allowed unless the development is for new or improved facilities or suitable equal standard or better alternative provision is provided for or where there is an identified excess in provision of a particular facility.
42. *T6 – Provision for Public Transport: General* – Development proposals should be designed to encourage use of public transport and reduce reliance upon the private car by locating accesses close to bus routes and footpath links. Where

new transport links are required an appropriate contribution will be sought from the developer through a Section 106 obligation.

43. *Policy T8 – Car Parking Provision* – States that new development should seek to minimise parking provision other than for cyclists and disabled users, other than in exceptional circumstances.

44. *Policy T15 - Access and Safety provisions in design* - Development should have safe access to classified road, should not create high levels of traffic exceeding the capacity of the local road network, and have adequate links to public transport, with consideration for cyclists and service vehicles and emergency vehicles.

45. *Policy T17 - General Policy* - All new developments should have regard to and be consistent with the provision of a safe and accessible transport network, in particular through reducing reliance on the private car, encouraging the use of public transport and promoting cycling and walking.

RELEVANT EMERGING POLICY:

46. Paragraph 48 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

47. *Highways* – No objections to the principle of new residential development but advise that for any full planning application (or reserved matters) the proposed new dwellings will need to achieve minimum on-site car parking provision in accordance with the requirements of the Council's parking standards.

48. *Northumbrian Water* – No comments offered other than informing the LPA that a public sewer crosses the site.

49. *Coal Authority* – No objections.

INTERNAL CONSULTEE RESPONSES:

50. *Design and Conservation Officer* - In relation to heritage matters the Officer has no objections or fundamental concerns in relation to the principle of residential development on this site. In terms of the walled garden, given the extent of development that has occurred and that the historic garden buildings once

attached to the north, south and west walls that have been lost, the walled garden is far from complete and therefore the Officer considers that it has lost a high degree of its authenticity, integrity, and heritage value. That said, the Officer advises that the historic garden walls that exist still represent historic fabric that is important as a primary source of evidence giving a clear understanding of sites original use. As such they are considered to have a degree of historic and evidential values and can also be considered to have aesthetic merits, the patina of age contrasting with the modern dwellings. It is therefore the view of the Officer that it is of the utmost importance that these walls are retained, maintained and protected.

51. In relation to design matters the Officer considers that the loss of the open land would appear to have an adverse impact due to the land appearing as an open area of green amenity space. Furthermore, it is advised that the site layout does not reflect the existing as the proposed dwellings are shown to step forwards from the established building line and they do not have deep front amenity spaces.

52. *Spatial Policy* – Advise that saved policy NE2 (Development outside of settlements) is of relevance it provides a useful starting point for considering the locational credentials of planning proposals. In terms of Saved Policy HP6 (Residential within Settlement Boundaries) sets out specific requirements for development within these defined boundaries. It is noted that the policy only supports development within defined settlements if the proposal will be on a brownfield site. The Officer advises that the NPPF's definition of previously developed land specifically excludes 'land in built up areas such as residential gardens, parks, recreation grounds and allotments'. The Officer notes that there is a certificate of lawful use, ref. 06/00333/CLU in place in which the council recognises the purpose and use of the land as a communal green. It is considered that this does not preclude development in this location but does mean that further consideration will be required as to how appropriate this particular location is for residential development.

53. It is advised that saved Policy RL1 states that existing open spaces will be protected; this could have bearing on the proposals if it is considered that the land in question constitutes open space. Furthermore, it is pointed out that Saved Policy RL3 specifies that development which would result in the loss of any amenity open space should not be permitted unless it meets a set of specific conditions. Again, it is considered that this could have bearing on this proposal if the land in question is considered to be open space.

54. In terms of Saved Policy T17 (General Policy) it is advised that a proposal of this scale would not be expected to make any contribution towards public transport, walking or cycling infrastructure, though again this is a consideration to be borne in mind when considering the application. Furthermore, Saved Policy T6 (Provision for Public Transport) encourages sustainable travel by requiring development to be located on, or as near to as possible, existing bus routes, and footpath links should be available. Regarding sustainability, the Officer considers this to be a sustainable location from the point of view of accessibility of sustainable transport options.

55. In terms of housing land supply, the Officer considers that the contribution that two units would make to boost housing supply is not significant and should only be afforded limited weight in the determination of a future planning application.

56. Regarding the non-designated wall, the Officer advises that the development will need to be mindful of the wall and its setting. In terms of design the Officer

highlights the loss of amenity space and loss and lack of privacy. The Officer advises that educational provision is a material planning consideration and that demand on other community services and facilities should be taken into consideration and mitigated if necessary.

57. In this instance the Officer advises that 11d of the NPPF is engaged due to the fact that the housing policy most important for determining the application is out of date. However, the Officer considers that relevant remaining saved LP policies must still be afforded some weight. It is advised that simply because the paragraph 11d is engaged does not mean that they are irrelevant or are of no weight.

58. *Clean and Green* – No comments received.

59. *Neighbourhoods*- No comments received.

60. *Education* – No comments received.

PUBLIC RESPONSES:

61. Thirty-four letters of consultation were sent out to surrounding residents. This has resulted in 46 letters of objection from local residents and others. The Local MP, Kevan Jones, has also submitted a letter requesting that his constituent's concerns in relation to loss of amenity space, health and safety issues, traffic and parking issues, planning history are considered in the determination process.

62. The concerns of local residents are summarised as follows:

- Impacts on privacy, loss of view, loss of light/overshadowing, odour impacts, noise from traffic.
- The proposal does not relate well to the surrounding area, nor respect its predominant character, layout, street pattern, setting, design, materials or density.
- Increase in traffic, impacts on parking /access to estate and driveways which is already problematic.
- The historic wall could be damaged if building work carried out near it and the local residents are expected to maintain each dwelling's individual portion of this wall as part of the condition of purchase and deeds.
- The visual amenity afforded by the wall would be lost.
- The development would result in pressure for an original door feature of the historic wall to be removed.
- Removal of the door would restrict access to the site in breach of the Certificate of Lawful Use.
- The wall is our shared boundary and we would not consent to it being altered.
- The original planning consent in 1990 was granted on the basis that a communal area would be set aside for residents use.
- The land has been used as an amenity area for in excess of 25 years and was described as such by the original developers/land agents.
- There are restrictive covenants on place to restrict further building.
- The original planning permission restricted the number of dwellings and the proposal would be contrary to the requirement and purpose of this condition.
- A Certificate of Lawful use was granted by the former Chester-le-Street District Council in 2006 to use this land for amenity, play and recreational use therefore the land should not ever be built on.

- The land is not brownfield land and its development is therefore contrary to Chester-le-Street Local Plan Policy HP6.
- Proposal is contrary to local, strategic, regional and national planning policies, in particular there is conflict with Chester-Le-Street Local Plan Policies HP9, RL3, HP16, RL3 and policy 27 and 30 of the emerging County Durham Plan.
- Proposal is contrary to government circulars, orders and statutory instruments.
- The land is not poor quality and has been maintained by one of the residents.
- There is not an identified excess in provision of amenity space therefore the proposal is contrary to paragraph 97 of the NPPF.
- The fact that the land has not been designated as open amenity space by the County Council does not diminish its importance to local residents.
- Concerns over measurements stated being incorrect.
- Previous applications were refused on the grounds of overdevelopment due to proximity to other properties, overshadowing and loss of all amenity space for estate residents.
- The proposal conflicts with the space around dwellings advice contained within Appendix I of the Chester-le-Street Local Plan.
- The development would result in excavation and unnecessary interruption of services.
- Impacts on wildlife and flora and fauna seen on the area.
- Hazardous materials/ground contamination.
- Loss of trees.
- Effect on Listed Buildings and Conservation Areas.
- Landscaping.

The above is not intended to list every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at: <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PJZHGIGDH0900>

APPLICANTS STATEMENT

63. The site is a private open space, which is currently poor quality amenity space. The utilisation of this site for housing would be fully in accordance with National and Local Policy and would help meet the housing need of County Durham without the need for Green Belt release.
64. The proposed development will have a number of benefits which are of material consideration in the determination of this application. Most importantly, it is a highly sustainable location within the Chester le Street development settlement limits, subsequently having access to a large number of services and facilities.
65. All of the existing and proposed residents will have access to significant areas of amenity space and, therefore, no harm will arise from this development, though it is acknowledged that the outlook of the existing residents will be changed. It is important, however, to note the existing residents will continue to have an acceptable level of amenity and, in this regard, the indicative layout plan demonstrates appropriate separation distances can be afforded.
66. The overall planning balance weighs in favour of the proposals, being in line with the Development Plan Policy, so far as it is relevant, with no adverse impacts which would significantly and demonstrably outweigh the benefits.

67. In accordance with National Policy, the determination of this application should apply a presumption in favour of sustainable development and approve these two houses without delay.

PLANNING CONSIDERATIONS AND ASSESSMENT

The Principle of the Development

68. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of development, whether this is a sustainable location for housing development, loss of open space, the impacts upon residential amenity and the economy, impacts upon the character of the area and a non-designated heritage asset, highway safety and whether appropriate land stability and drainage can be achieved.

The Development Plan

69. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The NPPF was updated in February 2019. The overriding message remains that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.

70. In accordance with paragraph 213 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.

The Principle Issues

Engagement of paragraph 11 of the NPPF

71. The proposal would be in conflict with the most relevant saved local Plan policy HP6 (Residential development within settlement boundaries) as this is not a brownfield site and the indicative drawings do not demonstrate compliance with residential design criteria. However, this policy is inconsistent with the NPPF and also out-of-date, therefore, the weight to be afforded to this policy is reduced and paragraph 11 of the NPPF is engaged.

72. As specific policies in the Framework do not indicate that the development should be restricted the acceptability of the proposal rests on an assessment of whether any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Locational Sustainability

73.Paragraph 108 of the NPPF advises that when considering new development, it should be ensured that there are appropriate opportunities to promote sustainable transport modes can be taken up. There are bus stops with regular services to the nearby Town Centre and a few local shops within reasonable walking distance of the site. The proposed site can therefore be considered to be moderately sustainable as there would not be heavy reliance on the private vehicles for accessing employment and services.

74.It is accepted that the proposed development would result in greenhouse gas emissions. However, it is considered that such emissions are likely to be relatively lower than would be the case for alternative, less sustainable locations.

Residential Amenity

75.Chester-Le-Street Local Plan Policy HP9 requires proposals to avoid damage to neighbouring amenity and provide an attractive environment and adequate privacy and daylight. This policy is broadly consistent with the NPPF and NPPG. Section 11 Paragraph 117 of the NPPF requires planning decisions to ensure healthy living conditions and paragraph 122 emphasis the importance of securing healthy places.

76.In this instance whilst local residents' concerns are acknowledged, it is considered that the site could be developed in a manner that would achieve acceptable privacy, light and outlook for the existing residents. However, it is the amenity of future residents that is the greater concern here. The indicative plans fail to demonstrate that a good outlook within the rear ground floor of the property could be achieved by virtue of the close proximity (4.4m-5.8m) of the historic predominantly blank 3m high wall. This wall would be likely to have an overbearing impact on future development. Furthermore, the indicative plan fails to demonstrate the provision of suitable sunlit areas or private amenity space for two dwellings with a footprint reflective of the footprint of surrounding dwellings on this estate. Bearing this in mind it is not considered that the site is appropriate for the development of two proposed dwellings in terms of future residential amenity.

Loss of Open Space

77.Policies RL1 and RL3 of the Chester-Le-Street District Local Plan seek to protect against the loss of open spaces by limiting the circumstances when it can happen. RL3 prevents the loss of amenity open space unless the development is for new or improved facilities related to the use of the recreational land to safeguard its use or where suitable alternative provision is provided for, or where there is an identified excess in provision of a particular facility. Paragraph 97 of the NPPF advises that existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space to be surplus to requirements; or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss. Chester-le-Street Local Plan Policy HP16 seeks to ensure that proposals that involve the change of use from open spaces, landscaping and amenity strips to land for private residential purposes are assessed in terms of the effect on the use and location of the land in question.

78. The Council has carried out a detailed Open Space Needs Assessment in 2018 to identify those areas which are of high or low quality and value. This site is not listed in this assessment and is not subject to any recreation/open space designation. The OSNA also states that open amenity spaces should be a minimum of 0.2ha as lesser areas of open space are considered to have limited recreation function, although they are recognised for their visual amenity value. The application site is approximately 0.07ha and therefore well below this threshold, therefore an open space needs assessment was not requested, or required. Whilst the OSNA details that the wider Local Plan Monitoring Area (LPMA) of North Durham is lacking in amenity green space and most other types of space, the Whitehill Estate area appears well served by open space with several areas of amenity open space to the south and natural green space to the north (Whitehill Hall Woods) within 480 metres or 10 minutes' walk of this site which is the accepted access standard within the OSNA.
79. It is recognised however that the proposal would result in the loss of the only green space on this Cul-de-Sac and that the local residents applied for and were issued with a certificate of Lawfulness of Existing Use in 2006 for the use of the land for amenity, play and recreational use. Whilst this is not a planning permission, it can serve to provide legal certainty that the use is lawful at a point in time. This certificate was issued as at the time it was considered that on the balance of probability that the residents claims that the land had been used for such purposes had been demonstrated. Local residents claim that the land still remains used for such purposes.
80. However, despite the Certificate of Lawful Use and lack of physical restrictions placed on access to the site at present, it would be possible, as privately-owned land, to restrict such access in the future by erecting fencing up to 1m in height without the need for planning permission.
81. As the site is not designated as a high or low-quality open space and only offers limited potential for recreation it is not considered that this is a valuable community space, particularly where there are similar spaces within reasonable distance in the local area.
82. Bearing the above in mind, no significant weight is given to the loss of the space in amenity terms. In reaching this opinion the level of public support for the open space, the objections to the development and lawful use of the land are acknowledged. However, the weight that can be attributed to these objections are tempered as the current use of the site by the public is not permitted by the landowner with trespass signs being visible and is only not physically prevented, and as the site is not designated as a village green or open space.
83. To conclude on this issue, it is considered that the scheme would not be in conflict with Policies RL1, RL3 and HP16 and the Framework, which aims to guard against unnecessary loss of open spaces and recreational facilities.

Impacts upon non-designated heritage asset

84. Paragraph 197 of the NPPF states that the effect of an application on the significance of a non-designated heritage asset should be considered in determining the application. Where an application directly or indirectly affects non-designated heritage assets a balanced judgment is required having regard to the scale of any harm or loss and the significance of the heritage asset.

85. The specific significance of the garden wall lies not only with its age and historic purpose, but also its aesthetic merit in terms of the patina of age contrasting with the modern dwellings.
86. Concerns have been raised by residents over the possible damage to the wall from building works close by and that this development would lead to pressure for removal of the door feature. As no works to the historic walls have been identified at this stage the Design and Conservation Officers do not object on heritage grounds provided that the wall is protected during construction.
87. It is, however, the opinion of your Officers that this application would result in direct effects on the historic wall as boundary features would likely need to adjoin the wall to enclose private areas. Furthermore, the proposal would also indirectly affect the wall as the proposed dwellings would obscure views of much of remainder of the wall and its historic opening feature thereby reducing the ability to understand the original use of the site and losing the aesthetic quality achieved by the juxtaposition of the historic wall in the context of the newer properties. It is considered that this weighs against this proposal.

Impacts upon character of the area

88. Chester-Le-Street Local Plan Policy HP9 requires developments to relate well to the surrounding area, respect its predominant character and street pattern, setting and density. This policy is broadly consistent with the NPPF although the NPPF is less prescriptive in respect of density stipulated design requirements. Paragraph 127 of the NPPF dictates that developments should amongst other criteria add to the overall quality of the area and be visually attractive, be sympathetic to the local character and history, including the surrounding built environment. To achieve appropriate densities Section 11 of the NPPF requires LPA's to consider need, availability of land, local market conditions and viability, the availability and capacity of infrastructure, the desirability of maintaining an area's prevailing character and setting or of promoting regeneration and change and the importance of securing well-designed, attractive and healthy places. Chester-le-Street Local Plan Policy HP16 seeks to ensure that proposals that will result in the change of use of open land in residential areas for private residential areas are assessed in terms of the effect on the character of the area amongst other criteria. Appendix I of the Chester-le-Street Local Plan advises that the amount of space around housing should be sufficient to ensure a satisfactory appearance for the whole estate.
89. Local residents are concerned about the design and materials for the development. Whilst the finer design details such as development footprint, layout, design and materials are not for assessment given this is an outline application, Officers consider that it has not been demonstrated that it would be possible to construct two dwellings on this site that manage to achieve an acceptable level of outlook and light whilst also achieving the deep front and rear amenity spaces characteristic of this estate. The indicative drawings show dwellings that are slightly smaller in footprint than the surrounding dwellings and the size of the gardens does not reflect the existing context.
90. The proposed development of the open green space would exacerbate the feeling of enclosure within the estate and result in the loss of space within this compact residential area which provides visual relief from the surrounding built up area. Thus, it is agreed with local residents that the proposed development would be harmful to the character and appearance of the area. Residents are correct in that the surrounding estates all have areas of grassed open space and therefore this

development will result in this estate being out of character in the wider context of this part of Chester-Le-Street.

91. Part of the character of this estate is that it was built entirely within the former walls of the Whitehill Hall Walled Garden from which it takes its name. The properties are centred around the green open space and remaining section of the historic wall with views of this aesthetically pleasing feature adding to the unique character of this estate. The proposal would be unsympathetic to the character and history of the estate to the detriment to the character of the area.

92. Density has been an issue raised by objectors and taking on board the considerations above it is not considered that the density on this site is appropriate.

93. It is recognised that notwithstanding this planning application that it would be possible, as privately-owned land for the owner to fence off this land under permitted development rights. However as this would be permissible under planning legislation only to a height of 1m without planning permission it is not considered that such enclosure would have a similarly significant harmful impact upon the character of the estate as views both into the site and of the historic wall would still be possible above any fencing. No significant weight is therefore given to this possible fall-back position.

Five Year Housing Land Supply

94. Paragraph 73 of the NPPF maintains the requirement for Local Planning Authorities (LPAs) to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.

95. Within County Durham all of the extant development plans are more than five years old and their housing figures need revising so the starting point for calculating land supply will be local housing need using the Government's standard methodology. The 'Preferred Options' (June 2018) stage of the emerging County Durham plan (CDP) is aligned with the standardised methodology and identifies a housing need figure of 1,368 dwellings per annum (dpa). The Council is able to demonstrate in excess of 6 years supply of deliverable housing land against this figure. Accordingly, the weight to be afforded to the boost to housing supply as a benefit of the development is clearly less than in instances where such a healthy land supply position could not be demonstrated. The boost to housing supply from the development of two dwellings should not therefore be given significant positive weight in the planning balance.

Building a strong, competitive economy

96. Section 6 of the NPPF advises that significant weight should be placed on the need to support economic productivity. It is recognised that the development would be likely to support the local construction industry. However, in terms of construction this would only be short term and would not carry much weight in favour of the proposal.

Drainage Considerations

97. Chester-Le-Street Local Plan is silent in respect of flooding. Section 14 of the NPPF requires Local Planning Authorities to take full account of flood risk.

Paragraph 163 advises that development should not increase flood risk elsewhere. The applicant has detailed that surface water drainage would be to the mains sewer which is contrary to the requirements of the County Durham Surface Water Management Plan therefore a surface water drainage scheme would have to be made subject of a condition in the event of an approval. With such a condition it is considered the application gains the support of the NPPF in this respect.

Land Stability

98. Chester-Le-Street Local Plan is silent in respect of land stability. Section 15 of the NPPF requires Local Planning Authorities to prevent new development from being put at unacceptable risk from the effects of land instability which is of relevance as the site lies within a Coalfield development High Risk Area.

99. In terms of land stability, the Coal Authority have not objected to the development as they are satisfied that the content and conclusions of the Coal Mining Risk Assessment Report are sufficient for the purposes of the planning system in demonstrating that the application site is safe and stable.

Provision of Education and community Facilities

100. Paragraph 94 of NPPF confirms that the government places importance in ensuring that sufficient choice of school places is available to meet the needs of existing and new communities and requires LPAs to ensure this. It is not anticipated that the addition of two households would necessitate funding to improve school capacity.

101. Paragraph 92 of NPPF recognises the need for planning decisions to ensure an integrated approach when considering the location of new housing and to plan positively for the provision and use of community facilities and local services. This provides policy justification to seek mitigation in respect to essential services including GP provision where a deficit would result from, or be exacerbated by, a proposal. Given the size of the development the impacts to local community facilities would be minimal and neither weigh in favour or against this proposal.

Access/Parking/highway Safety

102. A range of transport policies apply to this scheme however only T6 and T15 achieve some consistency with national guidance. T6 requires development to be consistent with a safe and accessible public transport network and should help to encourage its use by all members of the public. T15 requires developments to have safe access, turning and manoeuvring space, acceptable levels of traffic, adequate links and access to and provision for public transport and consideration for pedestrians and cyclists. Paragraph 108 advises that appropriate opportunities to promote sustainable transport modes can be taken up, a safe and suitable access to the site can be achieved and that any significant impacts can be cost effectively mitigated.

103. As detailed above it is considered that this is a moderately sustainable location with opportunities for residents to use sustainable transport modes. Whilst the residents of the estate have concerns over the potential for off street parking and additional traffic using the estate road, the Highways Officer has no such concerns and has no objections to the principle of new residential development subject to parking requirements being met on site. In order to encourage alternative means of transport electric vehicle (EV) charging points can be required by condition. Full

details of charging points and parking arrangements would be submitted under the reserved matters application. Bearing the above in mind it is therefore considered that in terms of Highways Safety the proposal is in accordance with the NPPF and Chester-Le-Street Local Plan Policy.

Other Issues

104. Members will be aware that objections in relation to loss of view are not material planning considerations.
105. Objections relating to hazardous materials/ground contamination, smells, loss of trees and effect on listed Buildings and Conservation Areas detailed by an objector are not considered relevant to this application
106. Issues raised in relation to the responsibility for maintaining the boundary wall are a civil matter between the interested parties and not a material planning consideration, as are covenants on the land.
107. It is noted that residents claim that the original planning consent in 1990 was granted on the basis that a communal area would be set aside for residents use however there is no record of this within the Council planning records.
108. It is acknowledged that the land has been used as an amenity area for in excess of 25 years and was described as such by the original developers in sales particulars, but these would not prevent the granting of planning permission for an alternative use. As outlined above the land could be enclosed and access restricted without planning permission.
109. Whilst the original planning permission restricted the number of dwellings this only relates to that permission and does not prevent further permission being granted in the future.
110. A Certificate of Lawful use determines the lawful use of the land at the time but would not prevent further planning applications to change the use or develop the land.
111. Concerns over site measurements stated being incorrect have been checked and the site is confirmed to measure the area as stated within this application.
112. It is acknowledged that previous applications were refused on the grounds of overdevelopment due to proximity to other properties, overshadowing and loss of all amenity space for estate residents however these applications pre-dated the NPPF.
113. Whilst the development would lead to disturbance during the construction process it would not be reasonable to refuse an application on these grounds. An informative could be imposed to advise upon suitable working times and use of equipment.
114. Concerns have been raised about impacts to wildlife and flora and fauna however the grass appears to be well maintained therefore this is not considered relevant.
115. Health and Safety matters are not material planning considerations.

The Balancing Exercise

116.The application brings the benefits of adding to the County’s housing supply of dwellings in sustainable locations and aiding the local construction economy.

117.The adverse impact considerations relate to the poor amenity for future residents from lack of light and overshadowing and poor outlook, the direct and indirect harm to a non-designated heritage asset of aesthetic and heritage value and the detrimental impact to the character of the estate and the visual quality of the area that would result from overdevelopment, the unsympathetic development and the loss of the only green space.

118.All other issues are considered neutral.

119.This balancing exercise has led your Officers to the following conclusion.

CONCLUSION

121.The conclusion of the balancing exercise of paragraph 11 of the NPPF is that the impacts on the future residential occupiers and on the non-designated heritage asset, the character of the estate and general visual amenity would significantly and demonstrably outweigh the limited housing supply, sustainable transport and construction economy benefits, when assessed against the policies in the Framework taken as a whole. Therefore, in accordance with paragraph 11 of the NPPF, the application should be refused.

RECOMMENDATION

That the application be **REFUSED** for the following reasons:

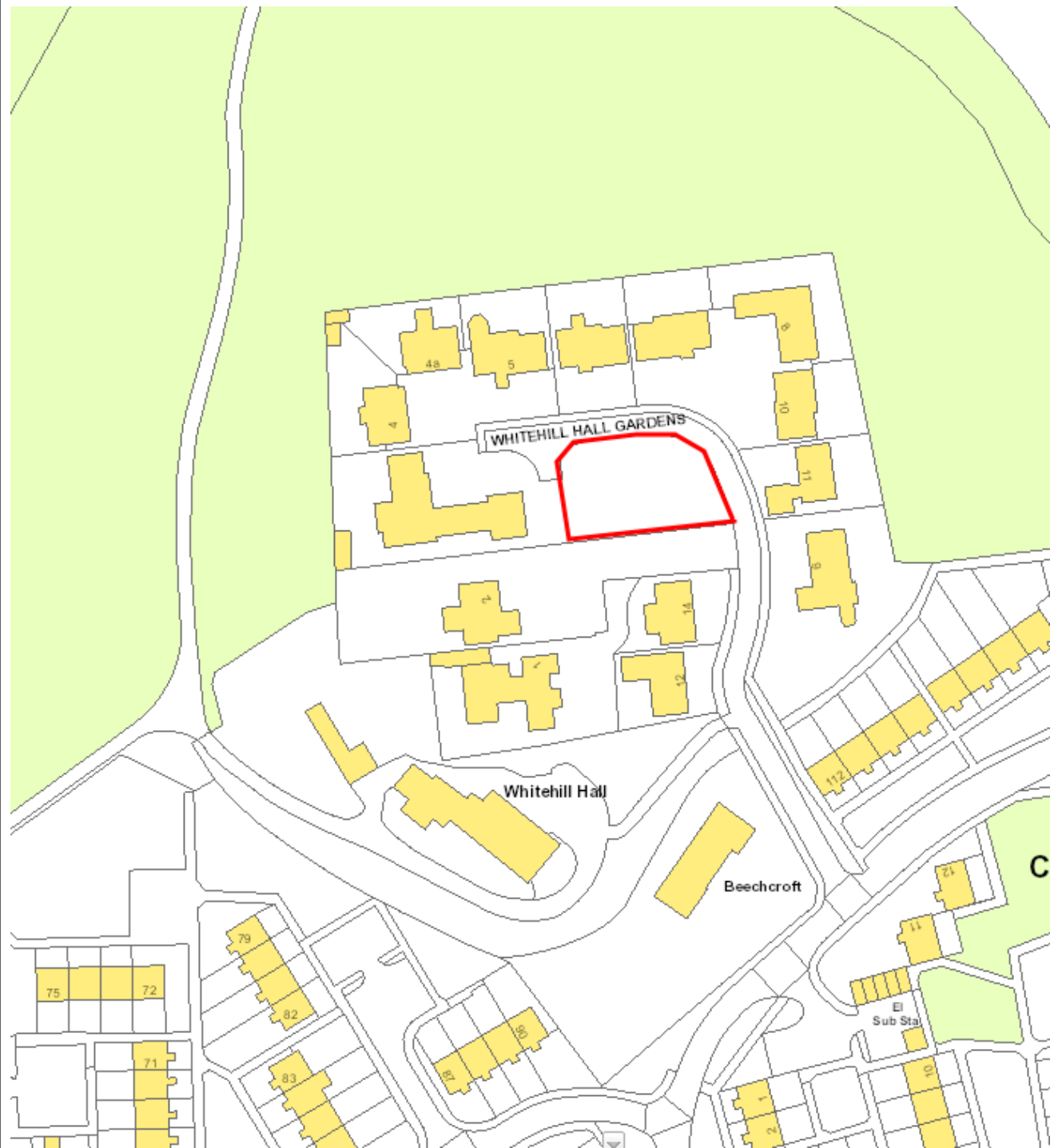
1. The applicant has failed to demonstrate the site is capable of accommodating two dwellings whilst providing a reasonable level of amenity for residents, due to lack of light, overshadowing and poor outlook and private space contrary to Chester-Le-Street Local Plan Policy HP9.
2. The proposal would result in harm to the walled garden wall, a non-designated heritage asset of aesthetic and heritage value contrary to paragraph 197 of the NPPF.
3. The proposal would result in overdevelopment, a lack of private amenity space and loss of landscaped green space which would result in significant adverse impacts to the character of the estate and the visual amenity of the area contrary to Chester-le-Street Local Plan Policies HP6, HP9 and HP16.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to refuse the application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. However, the delivery has not been possible in this instance. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

BACKGROUND PAPERS

The National Planning Policy Framework (2019)
National Planning Practice Guidance Notes
Chester-le-Street Local Plan 2003 (saved policies)
Statutory, internal and public consultation responses
Submitted forms, plans and supporting documents



Planning Services

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Erection of 2 no. dwellings.

Application Number DM/18/03860/OUT

Comments

Date 28.03.2019

Scale NTS