

Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No: 6/2011/0035/DM

FULL APPLICATION DESCRIPTION: Outline application with all matters reserved for 18no dwellings

NAME OF APPLICANT: Mr & Mrs F Horner

ADDRESS: Land North East Of Jubilee Terrace
Evenwood
DL14 9QE

ELECTORAL DIVISION: Evenwood

CASE OFFICER: Tim Burnham Senior Planning Officer 03000 263963
tim.burnham@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1. The application site is a mainly grassed area of land which sits relatively centrally within Evenwood to the north west of Copeland Lane. An industrial site occupied by CA Group Limited (manufacturing) borders the site to the north east, while 'The Bungalow' sits closely to the south east of the site. Conifer trees line the north eastern boundary of the site with the industrial estate. Evenwood surgery also sits close to the intended entrance to the site, which is off Copeland Lane.
2. The application is in outline with all matters reserved and proposes the erection of 18no. residential dwellings. As such the proposed site plan is treated as indicative.
3. The application is reported to the Planning Committee as it constitutes a major development.

PLANNING HISTORY

4. Outline planning approval had previously been granted on the site for the development of a doctor's surgery and 18 no. houses in 2008 (6/2007/0568/DM). This approval has however expired, and included a condition requiring that a noise assessment be carried out prior to the submission of any reserved matters application for the houses. The doctor's surgery has since been developed having been granted planning approval through a separate full planning application in 2009 (6/2009/0251/DM).
5. The current application has remained undetermined for a considerable time since its submission in 2011, but the submission of a noise assessment has finally enabled this application to progress to determination.

PLANNING POLICY

NATIONAL POLICY

6. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF). However, the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.
7. *NPPF Part 4 – Promoting sustainable Transport.* The Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. On highway safety, there must be safe and suitable access to the site for all people. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
8. *NPPF Part 6 – Delivering a Wide Choice of High Quality Homes.* Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Local planning authorities should seek to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities; however, isolated homes in the countryside should be avoided.
9. *NPPF Part 8 - Promoting healthy communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see. To support this, local planning authorities should aim to involve all sections of the community in the development of Local Plans and in planning decisions, and should facilitate neighbourhood planning.
10. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure Local Planning Authorities should adopt proactive strategies to mitigate and adapt to climate change. Inappropriate development in areas at risk of flooding should be avoided.
11. *NPPF Part 11 – 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.

The above represents a summary of those policies considered most relevant in the Development Plan

LOCAL PLAN POLICY:

12. The following saved policies of the Teesdale Local Plan are relevant to the application:
13. *Policy GD1: General Development Criteria:* All new development and redevelopment within the district should contribute to the quality and built environment of the surrounding area and includes a number of criteria in respect of impact on the character and appearance of the surrounding area; avoiding conflict with adjoining uses; and highways impacts.
14. *Policy H1A: Open Space within Developments:* In new residential development of 10 or more dwellings, open space will be required to be provided within or adjacent to the development.
15. *Policy H14: Provision Of Affordable Housing within Residential Developments* The local planning authority will, in appropriate circumstances as identified by a needs assessment of the district, seek to negotiate with developers for an element of affordable housing to be included in housing developments.

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.durham.gov.uk/article/3271/Teesdale-Local-Plan>

RELEVANT EMERGING POLICY:

The County Durham Plan -

16. Paragraph 216 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. The County Durham Plan was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 15 February 2015, however that report was quashed by the High Court following a successful Judicial Review challenge by the Council. As part of the High Court Order, the Council has withdrawn the CDP from examination. In the light of this, policies of the CDP can no longer carry any weight.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

17. *Highway Authority:* No objections to the principle of residential development of this site from the highways aspect.
18. *Northumbrian Water:* A scheme for the disposal of foul and surface water would be required. The local treatment works has been upgraded and would be able to accept flows from the development.

INTERNAL CONSULTEE RESPONSES:

19. *Environmental Health (Noise):* Objection. The result of the noise survey was that during the daytime there would be an adverse impact on the proposed residential premises in relation to noise and at night time there would be a significant adverse

impact on the proposed residential premises in relation to noise. Due to the impulse, tonal and intermittent nature of the industrial noise then this department cannot accept that mitigation measures such as glazing and ventilation will ensure that prospective residents will not be disturbed by these types of noise. As a result I would recommend that application is refused due to the potential for future residents of the dwellings to be affected by noise from the nearby industrial use and that this noise may be determined as a statutory noise nuisance.

20. *Drainage and Coastal Protection*: No objection. According to the EA and Durham County Council SFRA data there does not appear to be a risk of flooding to the development site. Drainage details would however be required.
21. *Affordable Housing*: The requirement for the provision of affordable housing in the West of the County is identified within the SHMA as requiring a minimum of 15% affordable housing units. This equates to the delivery of 3 affordable housing units providing a mix of affordable rent and low cost home ownership opportunities for those requiring affordable housing. I would suggest a split of 2 affordable rent units and 1 intermediate market housing unit.
22. *Landscape Section*: The application needs to be supported by a tree survey. It may however be preferable to remove the existing trees and replace them with a new hedge, which can more easily be maintained.
23. *Ecology*: No objection subject to any tree works taking place outside of the bird breeding season.
24. *Contaminated Land*: Contaminated land condition required.
25. *Spatial Policy*: No policy related objection.
26. *Sustainability Section*: No objections, any future application should encompass a Sustainability statement.
27. *Education*: There are sufficient Primary and Secondary School places for the additional pupils likely to be produced from this development therefore a contribution in respect of additional school places will not be required.
28. *Public Rights of Way*: Public footpath 10 runs along the north western boundary of the site. Details would be required of how the development would link into the existing public footpath network.

PUBLIC RESPONSES:

29. The application has been publicised by way of press and site notice and neighbour notification letters.
30. One letter of concern has been received from CA Group Limited who operate from industrial premises situated adjacent to the site to the north east. They advise that they operate a manufacturing business from the site employing over 160 people and during busy periods the factory can have 24hr production. They advise that there have been previous complaints from residents on Copeland Road and they have done their best to resolve these issues. They consider that the residential properties would be placed too close to their manufacturing site.

The above is not intended to repeat 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/>

APPLICANTS STATEMENT:

31. None made.

PLANNING CONSIDERATIONS AND ASSESSMENT

32. 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 issue relating to this application are the principle of development, proximity to industrial uses and S106 contributions relating to affordable housing and open space provision.

Principle of development

33. The site lies within the built up area of Evenwood, but because it is not previously developed land there are no relevant housing policies in Teesdale Local Plan. In addition, following the withdrawal of the County Durham Plan (CDP) after the High Court decision to quash the Inspector's Interim Report, the policies of the CDP can no longer be given any weight either.
34. In the absence of an up to date Plan the Council cannot currently demonstrate a five year supply of deliverable housing land, although the Council's position in recent appeals is that it has between 4.20 and 4.91 years supply. This engages Paragraph 49 of the NPPF which requires that housing applications should be considered in the context of the presumption in favour of sustainable development.
35. For decision taking this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies indicate development should be restricted. This will be assessed in the sections below.

Proximity to adjoining industrial uses

36. Teesdale Local Plan policy GD1(D) requires that development does not disturb or conflict with adjoining uses. This policy is consistent with the NPPF paragraph 109 which seeks to prevent both new and existing development from contributing to or being put at risk from or be adversely affected by unacceptable levels of noise pollution. Furthermore paragraph 123 of the NPPF sets out that planning policies and decisions should aim to avoid noise that gives rise to significant adverse impacts on health and quality of life. Existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. In addition, the Planning Practice Guidance states that noise needs to be considered when new developments would be sensitive to the prevailing acoustic environment. Local Plan Policy GD1 can therefore be given significant weight.
37. The application site is located immediately to the SW of an industrial site which hosts a large manufacturing business that has 24hr operation during busy times. A line of poorly maintained conifer trees along the boundary fence provides the only

separation between the application site and the car park, access road and manufacturing buildings on the industrial estate. There is also a large central open working/storage area within the industrial estate approximately 50m from the site boundary. The manufacturing business has expressed concerns about their operations being restricted by new housing in close proximity to their site, particularly as they have experienced problems with existing housing in Copeland Row to the north.

38. The applicant has submitted a noise assessment, which noted clearly perceptible daytime noise from reversing alarms and vehicle horns, as well as highly perceptible noise from clattering and banging during both the day and night from the industrial site. It classifies the worst case rated noise impact during the night as "significant adverse impact" according to BS 4142. The assessment therefore recommends use of increased specification of glazing and a ventilation strategy to achieve suitable internal night time noise levels in bedrooms of below 30dB, provided windows remain closed. The assessment considers noise levels within gardens would be acceptable because the daytime noise level of 49dB is below the desired level of 50dB.
39. However, the Council's Environmental Health (Noise) section consider that the proposed mitigation is only appropriate in cases where the noise source is constant e.g. road noise. In this case the noise from the industrial site is of an impulse, tonal and intermittent nature. The Environmental Health Section have therefore advised that even with the proposed mitigation in place sleep disturbance would still be likely and would therefore amount to a statutory noise nuisance.
40. It is also noted that the daytime noise level that would be evident in gardens is only just below 50dB and would still be 9dB higher than the background daytime noise level of 40dB, which could be considered intrusive. There would also be no flexibility for change in business practices or expansion within these ranges.
41. Having regard to these factors, it is considered that the noise effects from the adjacent industrial site would lead to a poor living environment for future residents of properties on the application site. This would be likely to result in complaints from future occupiers of the properties, which could result in restrictions being placed on operations at the industrial premises and would limit any potential for expansion. The NPPF seeks to avoid such circumstances where existing established businesses have unreasonable restrictions placed on them because of changes in land use since they were established.
42. Whilst it is noted that existing properties to the north of the industrial site may already place constraints on the business operations, the majority are further away than the proposed dwellings would be because of the shape and size of the site and in any case, this is not a reason to compound the situation by creating difficulties in other parts of the industrial estate.
43. It is therefore concluded that the proximity of the application site to the nearby industrial estate would be likely to lead to conflict between the uses, which would harm the living conditions of future residents, lead to potential constraints on an existing business and their expansion, and reduce the attractiveness of the industrial estate to future investors.
44. Accordingly, there is significant conflict with Teesdale Local Plan policy GD1(D) and paragraphs 109 and 123 of the NPPF.

Affordable Housing and Play Space

45. In line with saved Policy H14 of the Teesdale Local Plan and advice from the Council's Housing Section, there is a need for the provision of affordable housing in the area, equating in this case to the delivery of 3 affordable units in the development. This Policy is consistent with the NPPF in respect of delivering a wide choice of high quality homes and to create sustainable communities.
46. In addition, Local Plan Policy H1A seeks the provision of open/play space within developments of 10 or more dwellings. This is in accordance with the aims of NPPF Part 8, which recognises the important role planning can play in facilitating social interaction and creating healthy communities through delivery of social and recreational facilities. The Open Space Needs Assessment (OSNA) identifies a deficiency of play space in Evenwood. The development would increase the need for such facilities. However, given the limited size of the site and amount of development proposed, it would not be possible to meet this requirement within the site. A financial contribution to offsite provision/improvement would be therefore be necessary.
47. It is noted that the applicant has indicated willingness to enter into a S106 agreement to for affordable housing and open space contributions. However, there is currently no S106 to secure this. The Planning Practice Guidance (PPG) states that a condition requiring a planning obligation be entered into is only appropriate in exceptional circumstances in relation to more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Those circumstances do not apply to the application proposal and therefore the use of a condition to enter into a S106 would not be appropriate.
48. Accordingly, in the absence of an appropriate Agreement or Undertaking the intention to provide affordable housing and open space provision/contributions cannot be given any weight and it cannot be said the proposal makes adequate provision for affordable housing or open space provision to comply with Teesdale Local Plan Policies H1A and H14 and NPPF paragraphs 50 and 73.

Other Issues

49. The site would take access from the existing access off Copeland Lane. The Highway Authority considers the arrangement acceptable and therefore has no objection.
 50. No significant ecological interest has been identified in the site and there is no objection from the Ecology Section.
 51. The Education Section has advised that there are sufficient Primary and Secondary School places in local schools so no education contribution is required.
 52. The issues relating to landscape, drainage and accommodation of the public footpath in the site would be dealt with at reserved matters stage.
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CONCLUSION

53. In accordance with paragraph 49 of the NPPF, housing applications should be considered in the context of the presumption in favour of sustainable development. The NPPF states that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously.
54. The provision of housing in an area without an up to date 5 year housing supply is a significant benefit of the scheme. There would be some support for local services and temporary employment benefits during the construction period. This would contribute to the economic and social aspects of sustainability.
55. However, the proposal would involve the introduction of a noise sensitive use adjacent to an established manufacturing business, which is a major local employer. The noise from the business operations have been identified as being at the level of "significant adverse impact" and the Council's Environmental Health Section is not satisfied that appropriate mitigation would be provided to ensure future residents are not adversely affected by the activities at the adjoining industrial premises. As a result, the development may produce a poor living environment and the existing business is likely to be hampered in their ability to carry out their day to day activities and to expand without additional burdens, in the form of noise controls, being placed upon them. The proposal is also likely to reduce the attractiveness of the industrial estate to future investors. Consequently, the proposal would result in dis-benefits in environmental, economic and social terms.
56. Intentions to provide affordable housing and open space contributions cannot be given any weight when there is not even a draft agreement or undertaking in place. Open space contributions would in any event be required to mitigate the effects of the development rather than being a benefit of the scheme and as such would have a neutral effect on the planning balance if provided.
57. It is considered that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. When assessed against the development plan and the NPPF considered as a whole, on balance, the overriding consideration is that the scheme would not be sustainable development. There is clear conflict with saved local plan policies GD1, H1A and H14. The material considerations considered above do not justify making a decision other than in accordance with the development plan.
58. The application is therefore recommended for refusal.

RECOMMENDATION

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

- 1) The development, by reason of its proximity to the nearby industrial estate would be likely to lead to conflict between the uses as a result of noise, which would harm the living conditions of future residents and lead to potential constraints on an existing business and their expansion. This is contrary to saved policy GD1(D) of the Teesdale Local Plan, and when assessed against the development plan and the NPPF considered as a whole, it is considered that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

- 2) In the absence of an appropriate Agreement or Undertaking it cannot be said the proposal makes adequate provision for affordable housing or open space provision to comply with the requirements of Teesdale Local Plan Policies H1A and H14 and NPPF paragraphs 50 and 73.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to recommend refusal of this application have, without prejudice to a fair and objective assessment of the proposal considered the proposal in relation to relevant planning policies, material considerations and representations received, however, in the balance of all considerations, the issues of concern could not result in a positive outcome being achieved. The applicant was advised of the outcome prior to the decision.

BACKGROUND PAPERS

Submitted application form, plans supporting documents

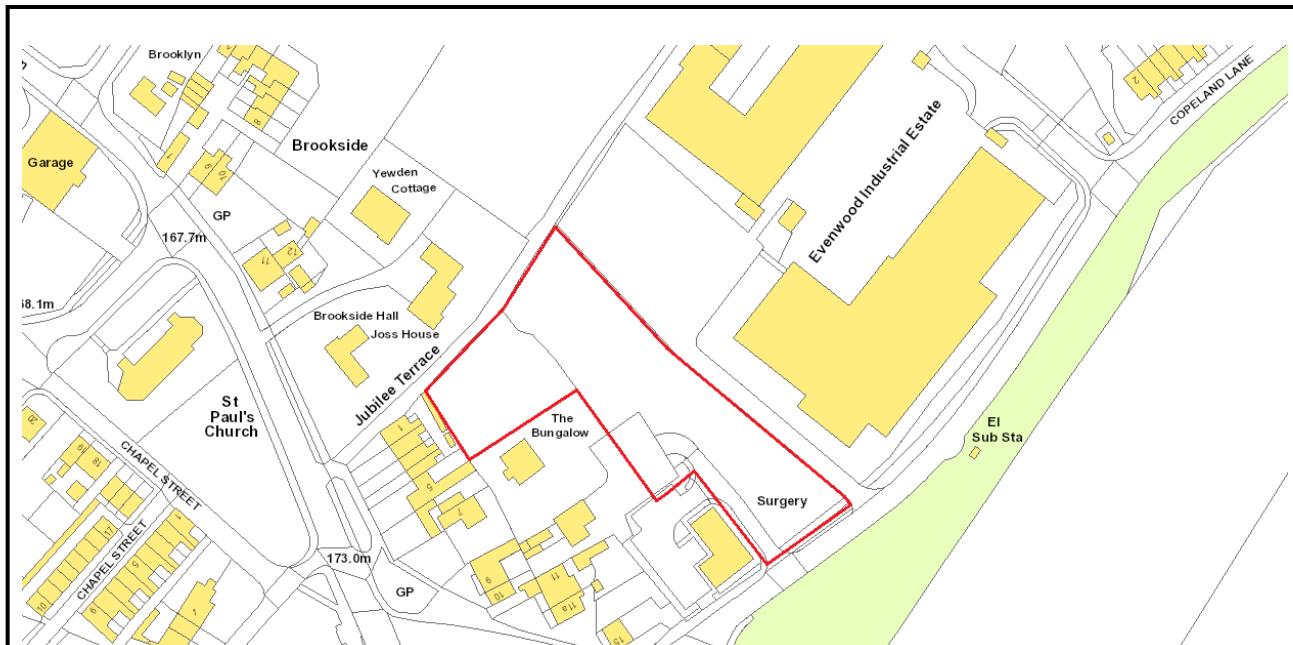
The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

Teesdale Local Plan

The County Durham Plan (Submission Draft)

All consultation responses received



 Planning Services	Outline application with all matters reserved for 18no. dwellings	
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